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IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

No. 164.

PIEDMONT & NORTHERN RAILWAY COMPANY AND NATIONAL ASSOCIATION OF RAILROAD AND UTILITIES COMMISSIONERS, *Appellants,*

versus

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND SOUTHERN RAILWAY COMPANY, ET AL., *Appellees.*

BRIEF ON BEHALF OF INTERVENING STEAM RAILROADS, APPELLEES.

L. E. JEFFRIES,
S. R. PRINCE,
S. S. ALDERMAN,
Solicitors for Southern Railway Company.

JAS. F. WRIGHT,
Solicitor for Seaboard Air Line Railway Company.

CARL H. DAVIS,
F. B. GRIER,
Solicitors for Charleston & Western Carolina Railway Company.

CARL H. DAVIS,
Solicitor for Atlantic Coast Line Railroad Company.

EDWARD S. JOUETT,
WM. C. BURGER,
Solicitors for Louisville & Nashville Railroad Company.

JAMES J. MCLAUGHLIN,
Solicitor for Carolina, Clinchfield & Ohio Railway, Carolina, Clinchfield & Ohio Railway of South Carolina, and Clinchfield Northern Railway of Kentucky.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

SUBJECT INDEX.

	Page
STATEMENT OF THE CASE	1
SUMMARY OF ARGUMENT	7
ARGUMENT	11
1. Status of Piedmont & Northern as now constituted	11
2. Its character if extended as proposed	22
3. Interrelation of Piedmont & Northern with Duke interests and other shippers.	33
4. Legislative purpose and present national railroad policy as determining proper construction of statute	37
5. Effect of proposed extensions on national transportation system	44
6. Predominant part of appellant's business must control its classification	50
7. Literal meaning of word "interurban" and emphasis on word "electric" cannot govern construction of statute	53
8. Comparison of sec. 1, par. (22) with other statutory provisions does not assist appellant	55
9. Application of canons of statutory construction to statute involved in this case	58
10. History of "interurban" exception in sec. 1, par. (22), as guide to proper interpretation thereof	60
11. Case of United States v. Village of Hubbard, 266 U. S. 474, does not support appellant's contentions	70
12. Appellant's assumption—"Once an interurban, always an interurban"—is wrong	72

Page

13. Reply to argument based on language used in Railway Labor Act 74
14. Additional reasons why decree below should be affirmed 77

CONCLUSION 81

APPENDIX.

A. Graph prepared from record, showing interrelations of Duke interests.
B. Chart of affiliations of Piedmont & Northern directors with shipping interests.

TABLE OF AUTHORITIES.

Statutes:

Railway Labor Act, 1926, 44 Stat. 577, U. S. C., Title 45, sec. 151 ..... 9, 74
South Carolina Acts, 1911, c. 214, p. 373..... 12
South Carolina Code, 1922, sec. 5041 (4) 18
Transportation Act, 1920, 41 Stat. 456, U. S. C., Title 49, sec. 1, par. (18) and (22)..... 3
ibid., sec. 300 ..... 9, 74
Urgent Deficiencies Act, 1913, 38 Stat. 219, U. S. C., Title 28, sec. 41, subd. (28), and sections 43 to 48 ..... 2, 80

Cases:

Alexander v. The Mayor and Commonalty of Alexandria, 5 Cranch 1 76
Amsterdam, J. & G. R. Co., In re, 33 N. Y. S. 1009. 61
Auburn & W. Ry. Co., In re, 55 N. Y. S. 895..... 62
Brotherhood of Locomotive Engineers v. Spokane & Eastern Ry., U. S. Labor Board dec. No. 33 75
California Railroad Commission v. Southern Pacific Co., 264 U. S. 331 ..... 37, 42

Page

Chicago Junction Case, 264 U. S. 258..... 42
Construction and Operation by L. & N. R. R., 124 I. C. C. 581 48
Dayton-Goose Creek Ry. Co. v. United States, 263 U. S. 456 .....37, 79
Detroit & M. Ry. Co. v. Boyne City, G. & A. R. Co., 286 Fed. 540 65
Eastern Ry. Co. of Minnesota, In re, 116 N. W. 841 62
Kings, Q. & S. R. Co., In re, 39 N. Y. S. 1004.... 62
Kirkpatrick v. Piedmont Traction Co., 170 N. C. 477 19
Lackawanna & Wyoming Valley Ry., 105 I. C. C. 178 57
Long Lake R. Co., In re, 42 N. Y. S. 125..... 62
Milwaukee Ry. Electric & Light Co., 206 N. W. 201 62
New England Divisions Case, 261 U. S. 184..37, 42, 79
New Hamburg & P. C. R. Co., In re, 27 N. Y. S. 664 61
People v. Public Service Comm., 125 N. E. 438.. 62
People ex rel. N. Y. Central & H. R. Co., v. Public Service Comm., 88 N. E. 261..... 62
People ex rel. Steward v. Board of Railroad Commissioners, 58 N. Y. S. 94 62
Piedmont & Northern Railway Co. v. United States, 30 Fed. (2d) 421 5
Proctor & Gamble v. United States, 225 U. S. 282 80
Proposed Construction of Lines by Piedmont & Northern Ry. Co., 138 I. C. C. 363..... 4
Proposed Control of Sacramento Northern Ry. by W. P. R. Co., 71 I. C. C. 653..... 68
Rochester, C. & E. Traction Co., In re 102 N. Y. S. 1112 62
Roy v. Illinois Commerce Comm., 153 N. E. 648.. 62
Spokane & Inland Empire R. Co. v. United States, 241 U. S. 344.....59, 60
Texas & Pacific Ry. Co. v. Gulf, Colorado & Santa Fe Ry. Co., 270 U. S. 266 .....8, 37, 39, 41

Page

United States v. Village of Hubbard, 266 U. S. 474 ..... 9, 70
Wisconsin Railroad Commission v. C., B. & Q. R. Co., 257 U. S. 563 ..... 37, 42, 79

REFERENCES TO CONGRESSIONAL RECORD:

Vol. 58, p. 8313 64
Vol. 59, p. 863 64

REFERENCES TO HOUSE COMMITTEE HEARINGS ON H. R. 4378, 65TH CONGRESS:

Vol. 1, p. 14 63
Vol. 1, pp. 98, 123 64
Vol. 9, p. 1613 66
Vol. 18, p. 3418 67
Vol. 19, p. 3554 68

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UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND SOUTHERN RAILWAY COMPANY, ET AL., *Appellees*.

BRIEF ON BEHALF OF INTERVENING STEAM RAILROADS, APPELLEES.

Statement of the Case.

This is an appeal from a final decree of the District Court for the Western District of South Carolina, a statutory court of three judges sitting, which decree dismissed the petition of the petitioner, Piedmont & Northern Railway Company, the appellant here.

The petition was brought in equity against the United States, under the provisions of the Act of October 22, 1913, c. 32, 38 Stat. 219, U. S. C. Title 28, sec. 41, subd. (28), and sections 43 to 48, to enjoin, set aside, and annul an order of the Interstate Commerce Commission rendered in the proceeding before the Commission in which the appellant Piedmont & Northern Railway Company was an applicant for a certificate of public convenience and necessity for the extending of its present lines of railroad from Spartanburg, S. C., across the state line to Gastonia, N. C., there to connect with its second present line of railroad running from Gastonia to Charlotte, N. C., and for the extending of its line from Charlotte on to Winston-Salem, N. C. In that proceeding the Commission found that the present and future public convenience and necessity was not shown to require such construction (R. 76) and denied the application for a certificate (R. 80).

In the proceeding before the Commission, Southern Railway Company, Atlantic Coast Line Railroad Company, Seaboard Air Line Railway Company, Carolina, Clinchfield & Ohio Railway Company of South Carolina, Clinchfield Northern Railway of Kentucky, and Louisville & Nashville Railroad Company, hereinafter referred to as the intervening steam railroads, intervened in opposition to the application for certificate. The states of North and South Carolina and the utilities commissions thereof, various cities and towns along the proposed extensions, certain trade organizations, and the National Association of Railroad & Utilities Commissioners intervened in behalf of the application. The Georgia & Florida Railroad, which had already been granted authority to extend its line from Augusta, Ga., to Greenwood, S. C., where it would connect with

the southern terminus of the existing line of the Piedmont & Northern, also intervened in behalf of the application.

The applicant raised before the Commission the question of the Commission's jurisdiction by moving to dismiss its own application, for the alleged want of jurisdiction in the Commission to pass upon it, on two grounds:

> 1. That the extension projects covered by the application were not in fact projects for new extensions of lines, but were merely for the carrying out of construction already undertaken in good faith prior to the effective date of the Transportation Act of 1920 and thereafter prosecuted with reasonable diligence and without abandonment.
>
> 2. That the applicant was an interurban electric railway, not operated as a part or parts of a general steam railroad system of transportation, within the meaning of the exception contained in Paragraph (22) of Section 1, exempting such interurbans from the provisions of Paragraph (18) thereof requiring certificates of public convenience and necessity.

On the merits the applicant asserted that, if the Commission should find that it had jurisdiction, the application should be granted on the asserted ground that the public convenience and necessity demanded the construction of the proposed extensions.

Evidence comprising a voluminous record was taken before the Examiner of the Commission. The Examiner filed a proposed report recommending a finding that the Commission had jurisdiction and a finding that the public convenience and necessity did not require

the construction of the proposed extensions and that the application be denied.

On exceptions to the proposed report of the Examiner the case was presented on briefs and oral argument to the full Commission (R. 31), on December 10, 1927. On April 3, 1928 (R 29) the Commission handed down its final report and order (R. 29-80) finding against the applicant on each of its grounds of objection to the jurisdiction, and holding on the merits that public convenience and necessity had not been shown to require the construction of the proposed extensions, that they would constitute unnecessary duplication of transportation lines paralleling and competing with existing adequate carriers, to the impairment of their capacity to serve, and ultimately against the interests of the public itself, in violation of the theory of the Transportation Act (138 I. C. C. 363).

The report of the Commission (R. 29-80) contains an exhaustive review of the evidence and of the contentions both on the merits and on the question of jurisdiction.

In the petition in the District Court below, no attack was made upon the action of the Commission as to its finding on the question of public convenience and necessity, the petitioner admitting that the decision of the Commission on that question was final, but the petition and the prayer for injunction therein were grounded upon the asserted want of jurisdiction of the Commission to entertain the application for certificate on the two grounds above stated.

In the District Court the National Association of Railroad and Utilities Commissioners was allowed to intervene in behalf of the petition and the Interstate Commerce Commission and the same steam railroads

above named and referred to as intervening steam railroads were allowed to intervene as defendants opposing the petition.

The cause was heard in the District Court upon the record before the Commission and at the suggestion of the District Court and for its convenience the voluminous record before the Commission was reduced by counsel to narrative form (R. 224).

The District Court, in an extremely well considered and careful opinion written by Soper, District Judge, (reported in 30 Fed. Rep. (2d series) 421) reviewing the pertinent evidence on the record in detail, held that the extension projects covered by the application were not projects which had been undertaken in good faith prior to the effective date of the Transportation Act, and held that the Piedmont & Northern as at present existing and as its lines were proposed to be extended was not and would not be an interurban electric railway within the meaning of the exception contained in Paragraph (22) and held, accordingly, that the Commission had jurisdiction of the application and dismissed the petition to enjoin, set aside and annul the order of the Commission.

Although its assignments of error covered the District Court's decision as to the Commission's jurisdiction on both grounds of the attack, on its brief in this court (2) the appellant expressly abandons the assignments of error seeking to raise for review the District Court's holding that the extension projects had not been undertaken in good faith prior to the effective date of the provisions of the Transportation Act.

The sole question for review here is whether upon the facts and evidence on the record the appellant, Pied-

mont & Northern, is, and as proposed to be extended, would be an "interurban electric railway" within the meaning of the exception contained in Paragraph (22).

The decision of this question involves: first, the determination as to the essential character of the Piedmont & Northern as at present operated, and as proposed to be operated over the proposed extended lines, and of the essential character of its business over the present and proposed lines; second, the proper construction of the exclusion language contained in Paragraph (22) excepting "interurban electric railways" from the provisions of Paragraph (18) giving the Commission supervision over extensions and requiring certificates of public convenience and necessity.

The record in this court has been substantially abbreviated by elimination, pursuant to stipulation, of all of the evidence on the record before the Commission relating to the question of public convenience and necessity and of all the evidence except that conceded to be material to the issue as to the jurisdiction of the Commission (R. 209-210).

The facts as to the character of the existing lines of the Piedmont & Northern and of the business now carried on by it, and as to what would be the character of the line if extended as proposed and of the business to be carried on over such extended line are substantially without dispute and the appellant admits that the material facts are fairly and accurately stated in the opinion of the District Court (appellant's brief p. 7).

On behalf of the intervening steam railroads, appellees, we shall make fuller reference to these admitted facts in connection with the various points of the argument, which are summarized as follows:

SUMMARY OF ARGUMENT.

I.

The Piedmont & Northern with its present disconnected lines is of such character and does a railroad business of such character that it is distinctly of national scope and significance, and is without the regulatory competency of individual states.

II.

Considering its lines as proposed to be extended, connecting with the Georgia and Florida on the South and the Norfolk and Western on the North to form a new effective trunk line of railroads through the Southeast, and considering the business it would then do, its essential character as a freight carrying railroad of national rather than local importance would be greatly enlarged.

III.

The ownership and domination of the Piedmont & Northern by the Duke interests and its interrelation with powerful allied freight shippers similarly controlled by the same owners produce an aggravated form of competition with steam carriers proposed to be paralleled and duplicated, distinctly a matter of national concern, and a powerful circumstance to show that it is not an "interurban electric railway" within the meaning of Paragraph (22).

IV.

The true test is to be found in a consideration of the legislative purpose and of the new railroad

policy introduced by the Transportation Act and in the principle of construction laid down by this court in *Texas & Pacific Railway Co. v. Gulf, Colorado & Santa Fe Railway Co.*, 270 U. S. 266.

V.

Extensions of a railroad which would have such a destructive effect as these proposed extensions on existing steam railroads cannot be deemed extensions of lines of an "interurban electric railway" exempted from federal supervision by Paragraph (22).

VI.

Appellant's attempt to treat a wholly inconsiderable part of its business as being its "distinguishing characteristic" and to eliminate the predominant part of its business as controlling its distinctive character and classification is unsound.

VII.

The attempt to limit the word "interurban" to its etymological sense or to eliminate it altogether from consideration in construing the statute, and to make the word "electric" the key to the construction leads *ad absurdum*.

VIII.

The argument of the appellant based upon comparison of the varying language of the different sections of the Transportation Act and other statutes falls far short of the result that an electric railway of the essential character of the Piedmont & Northern is excluded from federal regulation as to extensions as being an "interurban electric railway."

IX.

A proper application of the ordinary canons of statutory construction inevitably leads to the conclusion that the Piedmont & Northern is not an "interurban electric railway" within the meaning of the exclusion language of Paragraph (22).

X.

A consideration of the history behind the Transportation Act and the exception contained in Paragraph (22) and of the prior legislative proceedings inevitably leads to the conclusion that this extension project of the Piedmont & Northern is not within the exclusion language of Paragraph (22).

XI.

The case of *United States v. Village of Hubbard*, 266 U. S. 474, relied on by the appellant, is not authority for the interpretation contended for.

XII.

The appellant's assumption—"once an interurban, always an interurban"—is wrong. The court below correctly held that whatever may have been its character originally, the Piedmont & Northern has long since invaded the national field of transportation to the extent that it has clearly stepped out of the "interurban" class.

XIII.

The decision of the U. S. Labor Board construing section 300, and the use of somewhat similar language in the Railway Labor Act of May 20,

1926, cannot be construed as an adoption by Congress of the Labor Board's interpretation and as a retroactive declaration that language used in the Transportation Act had the meaning attributed to similar language by the Labor Board.

XIV.

Regardless of the view which this Court may entertain as to the construction of the words "interurban electric railway", the decree below should be affirmed as ultimately correct, for that, in any event, the suit should have been dismissed on either or both of the following grounds: (1) That the Piedmont & Northern, even if an interurban, is and would be operated "as a part or parts of a general steam railroad system of transportation"; and (2) the Commission's order is a negative order, not subject to injunction by the courts under the Urgent Deficiencies Act.

ARGUMENT.

Point One.

The Piedmont & Northern With its Present Disconnected Lines is of Such Character And Does a Railroad Business of Such Character That it is Distinctly of National Scope And Significance, And is Without The Regulatory Competency of Individual States.

Of course, in passing upon the question whether the proposed extensions would be the extension of lines of an "interurban electric railway" within the meaning of the exception in Paragraph (22) the decision must be based upon the true character of the Piedmont & Northern Railroad and of the business to be done by it if its lines should be extended as it proposes, and is not to be limited by a finding as to the present character of the existing lines and business.

However, both the Commission and the District Court have found that with its present disconnected lines of railroad and with the present business which it carries on over those lines the Piedmont & Northern is already an interstate freight carrier having such extensive freight business, the predominant part of it being interchanged with steam railroads and moving throughout the United States, that in its present status it has become a railroad of national scope and significance and has long since departed from, if it ever was in, the class comprehended within the meaning of the term "interurban electric railway."

The Charter.

The Piedmont & Northern Railway Company was incorporated by a special act of the General Assembly

of South Carolina, approved February 24, 1911 (see R. 210-217), which act authorized it to "construct, maintain and operate a line or lines of railway, with one or more tracks, to be operated by electricity or other motive power," in and through certain counties in South Carolina and such other counties in the state as might be selected by the corporation with the right to "purchase, lease, or otherwise acquire the railway and other property, including the rights and franchises, of any other railroad company or state railway not now in existence or hereafter created in this state, or in any other state of the United States," and to "hold, possess, operate, enjoy, exercise, and dispose of the same." In addition to these and other powers specially enumerated, the corporation is granted by the Act (R. 210) all "the rights and powers conferred upon railway corporations by Chapter XLVIII of the Code of Laws of South Carolina, and by all amendatory and supplemental Acts." The Act further grants the power of eminent domain and the power to condemn the right of way for its lines of railway not exceeding fifty feet on either side of the center as in the case of other railroads (R. 213-214).

From this it will be seen that the Piedmont & Northern was not incorporated as an interurban railroad but was incorporated as an ordinary railroad with all the rights and powers conferred upon railroads by the laws of South Carolina and in particular with the power "to be operated by electricity or *other motive power.*" It is clear that under its charter powers the Piedmont & Northern could abandon electric operation and adopt steam operation for any part or the whole of its line at any time.

Physical Features and Character of Business.

We quote from the lower court's opinion the following succinct statement of the undisputed facts as to the nature and character of the Piedmont & Northern's present lines of railroad and of the business carried over these lines (R. 235-37):

> "The road bed, rolling stock and equipment are of such a character that it is well suited to co-operate with steam railroads in the transmission of freight to distant points. Freight trains of 45 cars, using 2 locomotives, are not unusual; the average train is 20 cars. Most of the freight traffic is handled in cars owned by steam railroads but the petitioner owns 165 automobile cars and 99 other box cars, all of which are of ordinary steam railway type and move freely on foreign roads. Altogether, there are 337 cars. The construction is that of a standard steam railway. Expensive grading was undertaken; and grades and curves are suitable for heavy traffic. Rails are of 80 lb. section. Bridges were made as strong as those on the Southern Railway, and the locomotives purchased were heavier than was necessary for merely local traffic. The purpose of the builders from the beginning was to construct a line of railroad which would aid in the industrial development of the (fol. 285) Piedmont region and serve as a means by which mills and factories could find connections with the steam railroads of the country for the delivery of freight. Points of contact with carriers extending to outside territory have been obtained in as large a number as possible.**

"**The Piedmont and Northern has the following points of interchange on through routes in addition to switching points with steam railroads:

Traffic agreements have been made with the Seaboard Air Line, the Southern Railway and other roads with reference to rates and the division of revenue received in the interchange of traffic. While street railways have been used for local deliveries, the through freight does not pass through the cities, but is carried over additional lines which run around the cities and avoid the city streets.

"The business methods of the road are similar in many respects to those of steam railroads. It is a party to the tariffs of the steam roads and to the uniform express contract of the American Railway Express Company. It is a member of the American Railway Association, the Southern Freight Association and other traffic organizations of the steam roads. It is represented by powers of attorney in nearly every tariff bureau of the United States and has 502 published tariffs. It follows the methods of steam roads in matters of rate divisions, interline billing, claim settlements and in all of its relations with shippers and consignees. It publishes a tariff directory which is on file with the Interstate Commerce Commission. It has a general agent in New York, a commercial agent at Atlanta and at all of its connecting points.

"(fol. 286) The entire territory east of the Mississippi is tributary to the road in that freight originating on and destined to it is derived from or moves to every part of that section of the United States. While the matter had not been

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Continuation of footnote on page 13.

Points of Interchange.	Connections.
Charlotte, N. C.	Southern Railway.
Pinoca, N. C.	Seaboard Air Line Railway.
Gastonia, N. C.	Southern; C. & W. C. Ry.
Greenwood, S. C.	Seaboard Air Line Ry.
Shoals Junction, S. C.	Ware Shoals R. R.
Anderson, S. C.	Blue Ridge R. R. and C. & W. C. Ry.
Greenville, S. C.	Southern; C. & W. C. Ry.; G. & N. Ry.
Spartanburg, S. C.	Southern; C. & W. C. Ry.; Clinchfield."

studied in detail, the evidence tended to show that the road also sends freight beyond the Mississippi to the Pacific coast and to New England.

"The distribution of operating revenues very clearly tells the story. Petitioner's witnesses, speaking in round figures, state that 92 per cent of the revenue is derived from freight and only 8 per cent from passenger traffic. The detailed figures for 1926 show even a greater disparity.** The contrast between the revenues from local business and that from business interchanged with steam roads in 1926 is equally striking. While 97.63 per cent of the passenger revenue was derived from local traffic, and only 2.37 per cent from interchange, the reverse is true with revenues from freight of which only 4.75 per cent came from local station to station movement and 95.25 per cent from traffic handled jointly with steam roads. Of 72,886 loaded cars handled, 68,370 were interchanged, most of them in interstate movement, reaching all parts of the United States."

"**Operating Revenues of the P. & N. for the year 1926.

FREIGHT.

	per cent	
Local station to station	4.75	$108,572.05
Freight interchanged with connecting lines	93.12	2,130,843.80
Overhead or bridge traffic	2.13	48,676.13
		$2,288,091.98

PASSENGER.

Local station to station	97.63	$135,258.97
Passengers exchanged with connecting lines	2.37	3,280.71
Total Passenger		$138,539.68
Total freight	90.90	2,288,091.98
Total passenger	5.50	138,539.68
Express revenue	3.60	39,440.00
Mail		897.00
Other sources		50,393.00
Total revenues		$2,517,361.66"

The character of the petitioner's railroad, rolling stock and equipment and the character of its present business, substantially as set out above, were also found by the Commission (R. 36-8).

From the standpoint of the method of its operation, and the service it renders to its patrons the Piedmont & Northern is abundantly shown by the record not to differ from the ordinary steam railroads, except in the one particular that it uses electric locomotives instead of steam.

Description of Road by Its Own Officers.

Both the Commission in its report (R. 38) and the Court in its opinion (R. 240) referred to the fact that Mr. Cureton, Traffic Manager of the Piedmont & Northern, in his testimony described the railroad as being "interurban plus." And he said, "it performs all the characteristic services of an interurban railroad and equals that of the standard railroads in other respects" (R. 152).

This witness further testified:

> "I have made no study between the Piedmont & Northern and other electric interurban railways. I do not know whether the distinguishing characteristic of an electric interurban railroad is the dominance of local and interurban passenger traffic. I do know that the passenger, baggage and express traffic do not predominate on the P. & N. Essentially and in the large, the P. & N. is a freight carrier, and it is from freight that it gets its revenue and that is the source it expects to get its revenue from when extended. The great majority of freight on the P. & N. is interstate" (R.152-153).

Mr. Lee, the President of the Piedmont & Northern and the engineer who laid out and built the road, although testifying that he intended to design and construct an interurban electric railway, stated that the specifications for the road went ahead of the current practice for interurbans at the time (R. 120 middle).

The most cogent and convincing evidence on the record as to the nature and character of the Piedmont & Northern's present lines of railroad and the business carried on over those lines, showing clearly that the only difference between its lines of railroad and business and the lines and business of ordinary steam carriers is the one difference of electric motive power, was the statement made before the Interstate Commerce Commission on November 29, 1920, by Mr. Taylor, then President of the Piedmont & Northern, in Case 11774, *South Carolina Fares and Charges*, a certified copy of which was introduced in evidence in this proceeding before the Commission as exhibit No. 115 (R. 143-147), from which we quote as follows:

> "Mr. Chairman, and gentlemen. I shall not attempt to make any argument upon the general principles underlying this case, for the reason that it has been so elaborately argued by Mr. Rixey, but I shall address myself solely—except perhaps incidentally—to the idea that any order that is issued here should comprehend and include the Piedmont and Northern Railway Company. I would not have thought that necessary but for an expression that appeared in your last order, in the Illinois case. I am not attempting to get you to unsay anything that you said in that case, but I want to point out, if I may, facts and circumstances which make the expression in that case inapplicable here.

"In the first place, the Piedmont and Northern Railway Company is an electrically operated railroad in that it employs electric locomotives instead of steam locomotives, and that is the only distinction between it and the steam roads.

* * * * * * * *

"In this case before us, we are parties to this petition. We are interstate carriers in the fullest sense of the word, we were taken over by the Government and operated as a part of the Government's properties. Sixty-five per cent of our business is interstate business. We load cars from our stations on through bills of lading, through cars to the Pacific Coast, and we are in direct competition with the trunk lines in the South, not only for interstate business, but for intrastate passenger business.

"If the Commission please, in my opinion there would be every reason in the world, and certainly the same reasons for excluding in any raise the electrically operated portion of the Chicago, Milwaukee & St. Paul, as there would be for excluding us. The same reasoning would apply to the Norfolk & Western, the undisputed and indisputable fact being that we are a railroad competing for interstate business, 65 per cent of our revenue being derived therefrom. We are a class one railroad, under your definition of the classifications of railroads, and the only difference between us and any steam railroad operating in this country is the fact that we employ an electric locomotive, which the steam railroads some day must come to, instead of a steam locomotive."

Legal Status in Charter States.

It is interesting to observe that the general statute law of South Carolina (Code 1922), the parent state which chartered the Piedmont & Northern, gives a

statutory definition of an interurban railway which clearly excludes the Piedmont & Northern. That definition is as follows:

> "(5041) Sec. 4. 'Street Railway' and 'Interurban Railway' Defined.—In the construction of this Section and Section 5 the phrases 'Street Railroad' or 'Street Railway' shall be construed to include all railroads and railways operated by electricity, whose main business consists in the transportation of passengers between different points within the limits of a municipality; and the phrases 'Interurban Railroad' or 'Interurban Railway' shall be construed to include all railroads and railways operated by electricity whose main business consists in the transportation of passengers from one municipality to another."—

Under that statutory definition it is quite clear that the Piedmont & Northern, only about 5 per cent of whose business is passenger business, is not an interurban railway under the laws of South Carolina.

The applicant's line of railroad from Gastonia, N. C., to Charlotte was constructed by the Piedmont Traction Company and was operated by that Company until taken over by the Piedmont and Northern. This section of the line was then exactly what it is now. Just as the statute of South Carolina has defined this road not to be an interurban railroad, so the Supreme Court of North Carolina has held that it was a regular standard gauge railroad, in effect a "steam railroad", and was not an interurban road, in the case of *Kirkpatrick v. Piedmont Traction Company,* 170 N. C. 477.

That was a suit brought by an abutting property owner to recover damages for the laying of the Piedmont Traction Company's track and its operation in

the highway abutted by his property on the theory that it constituted an additional burden on the fee. It is the law of North Carolina that a street railway or an interurban railroad does not constitute an additional servitude but that a regular steam or commercial railroad does. The character of the business determines whether it constitutes an additional burden or not. In this case the Supreme Court of North Carolina held that the applicant's line owned by the Piedmont Traction Company and operated by it, did constitute an additional burden because it was a regular standard railroad engaged principally in the conduct of a general freight business. The court said:

> "We are of opinion that, from the nature and description of the defendant's business as given in the record, and the manner in which it operates its freight trains and interurban passenger trains, it should be classed as a 'steam railway' and cannot be regarded as the ordinary street railway. The matter is not to be determined by the character of the motive power, but rather by the character of the business done, as well as the injury inflicted by it."

District Court's View.

Upon all the undisputed evidence in the cause the District Court came to this final conclusion as to the nature and scope of the business of the Piedmont & Northern (R. 251):

> "Its (the Piedmont & Northern's) freight traffic dominates so completely the field of its operations, and reaches so far, through interchange with other railroads, that it is outside the class which Congress intended to exclude from the control of

the Commission. Even if in the beginning it was merely an interurban railroad, its essential character has so greatly changed, and its operations and interests have become so similar to those of a general steam carrier, that it is now well able to commit the mischiefs of uncontrolled expansion, which the Act was designed to prevent."

Again, the District Court in its opinion said (R. 247):

> "It is obviously difficult to form an exact definition of the term under discussion and to say when the general freight business of an electric railway has become so great that it has crossed the line between an interurban railroad, engaged in the general transportation of freight, and a general carrier subject to the provisions of the statute. But there is no difficulty in the case at bar in determining that the Piedmont and Northern has ceased to be primarily an interurban railroad. If any line of demarcation is to be drawn there can be no doubt that a railroad, 92 per cent of whose traffic comes from the general transportation of freight, and 95 per cent of whose freight traffic is interchanged with carriers connecting it with all parts of the United States, is to be placed in the same category as a general steam railroad."

We shall in this brief advert to a number of tests and considerations bearing upon the proper construction of the statutory expression "interurban electric railway" contained in the exclusion language of Paragraph (22) of the Act, but in last analysis the argument of this brief will be that the line between interurban railways within the meaning of that language and railroads which are not interurbans will be found to lie between that class of railways which are of dis-

tinctly local scope, significance and importance and hence are within the regulatory capacity of the individual states, and those railroads which are of larger and national scope, significance and importance and whose extensions are only within the regulatory competency of the national government.

Although on the record it is clear that the Piedmont & Northern, as a very incidental and insignificant part of its business does perform interurban functions, not however substantially different from those performed by all railroads, yet the entirely predominant part of its business has already, with its existing lines, attained such character and importance that its railroad and its business have become distinctly of national scope and concern and are clearly without the regulatory competency of individual states.

Point Two.

Considering Its Lines as Proposed to be Extended, Connecting with the Georgia and Florida on the South and with the Norfolk and Western on the North to Form a New Effective Trunk Line of Railroads Through the Southeast, and Considering the Business it would then do, Its Essential Character as a Freight Carrying Railroad of National Rather than Local Importance Would be Greatly Enlarged.

The principal purpose of the proposed extensions is to link up the present disconnected lines of the Piedmont & Northern and to tie them in with the Georgia & Florida at Greenwood, S. C., on the south, and with the Norfolk & Western on the north at Winston-Salem, N. C., to form a new trunk line of connecting carriers from Florida to the East, North and West, for the

carriage of heavy trunk line traffic, directly paralleling and duplicating the existing trunk lines of the Seaboard, the Atlantic Coast Line, and the Southern.

The Commission in its report said (R. 39):

> "All of the evidence shows that passenger traffic would be of relatively very small importance, and that the line would be designed primarily to carry freight. The applicant's line, as proposed to be extended, would connect with the Norfolk & Western and Southern at Winston-Salem and with the Georgia and Florida Railroad at Greenwood. One of the purposes for the proposed construction is to form a new through route for the movement of freight between the North, East, and West, and Florida points. The applicant estimates that the proposed construction will enable it to add to its present traffic over 82,000 carloads of freight in the first year of operation, of which over 12,000 carloads would be bridge traffic."

The effect of the proposed extensions, if they should be constructed, in extending and enlarging the business of the Piedmont & Northern as a large freight carrier of national scope and importance is clearly shown by the following from the District Court's opinion (R. 237-238):

> "The proposed extensions would not alter the character of the petitioner's business. There would be the same local service in the transportation of passengers and freight since the railway could connect with street railways of the cities en route. At the same time the interchange of freight business with steam railroads would be greatly increased. Indeed if the road should be completed so as to form a continuous interstate line in North and South Carolina, it would con-

stitute the interior connecting link in a new joint through route and in effect, a new trunk line will be formed in addition to those now provided by the systems of the Southern, the Seaboard and the Atlantic Coast Line; for the Piedmont and Northern would then connect with the Georgia and Florida at Greenwood, South Carolina, on the south, and with the Norfolk & Western at Winston-Salem, North Carolina, on the north. Numerous new connections with steam roads would then be made and many new points in distant sections of the country would become accessible; and the railway would become to an increased extent an integral part of the great interstate railway system of the country.

"The amount and character of the new business which would be done in the first year of the construction of the extensions has been estimated by officials of the petitioner as follows:

Freight	$3,597,384.00
Passenger	196,502.15
Express	70,260.76
Miscellaneous	25,869.66
	$3,890,016.57

During the succeeding five years, an increase each year of 8.4 per cent over the preceding year would be expected.

"It will be observed that the existing predominance of freight over passenger revenues would continue. It is estimated that the freight traffic would have its origin in the following manner:

Local traffic having origin and destination on the Railway's lines	21%
Traffic originating beyond and destined to the Railway	44%
Traffic originating on the Railway and destined to points beyond	20%
Overhead or bridge traffic	15%"

The total main line mileage of the present lines of the Piedmont & Northern is 131.59 miles. The proposed extension for which it sought certificate of public convenience and necessity before the Commission would add 123.2 miles, thus nearly doubling the length of the present line, and making a continuous interstate line of railroad having a total main line mileage of 254.79 miles from Greenwood, South Carolina, to Winston-Salem, North Carolina.

This fact fortifies us in the view that the proposed extended railroad is not in the class of "interurban electric railways." This conclusion is rendered certain when we consider that under the guise of making purely local extensions of a local interurban railroad, the line as proposed to be extended would, as shown by the above quotations from the Commission and from the District Court, connect physically with the Georgia and Florida at Greenwood, South Carolina, and with the Norfolk & Western at Winston-Salem forming in effect a new trunk line of connecting carriers running throughout the Southeast in direct competition with and paralleling and duplicating the facilities of the existing steam trunk lines. This would of course vastly increase the extent to which the Piedmont & Northern would be engaged in general freight business of a national scope and importance.

One of the principal prizes sought by the Piedmont & Northern is the capturing of the tremendous traffic in coal from the coal fields into industrial Piedmont North and South Carolina, a traffic now wholly carried by the intervening steam railroads. In a subsequent section of this brief we shall point out the extent to which this coal traffic and other traffic could be controlled for the Piedmont & Northern by the parent Duke interests which own that railroad.

A complete revision of our understanding as to the ordinary meaning of language is necessary if we are to contemplate such a railroad carrying such traffic as being an "interurban."

W. S. Creighton, who testified in support of the application, made the claim that the end sought was not merely the construction of a local road for local service, but was to put into service the reconstructed Piedmont & Northern as a potent factor to control and handle traffic between the north and south, as well as to and from the Piedmont section of Carolina territory and other sections of the country. He said (R. 162-163):

> "I am not testifying concerning the local phases of the Piedmont and Northern. I am interested in the completion of an independent through transportation route from the South to the East and West through Piedmont, North Carolina.
>
> "The completion of the G. & F. from Augusta to Greenwood, which has been authorized by the Interstate Commerce Commission, and the completion of the Piedmont & Northern as proposed in this case, will afford a new through line from Florida to the Eastern markets. At St. Clair, Georgia, a connection will be formed with the Savannah and Atlanta into Savannah; and at Charlotte with the Norfolk-Southern into Raleigh, Washington, and Elizabeth City, North Carolina, and Norfolk, Virginia, traversing central and eastern North Carolina.
>
> "By forming the connection at Winston-Salem, traffic can move through Roanoke, thence to Hagerstown, Maryland, and to the markets of the East; thence also to Cincinnati, and Columbus, Ohio, via Kenova, West Virginia. The completion of the Piedmont and Northern will thus afford a new independent and additional compet-

ing through route from the south to the east and west, a route owned, controlled and operated by interests other than those already serving the southern territory."

The applicant's witness, J. S. Cureton, Traffic Manager of the Piedmont & Northern, testified as follows (R. 154):

"The traffic which we would expect to handle over the lines as extended, moving up from Georgia or originating on and south of the Georgia & Florida, going to the middle west, say Buffalo-Pittsburgh territory, would be a large volume of melons, cantaloupes, produce and vegetables of all sorts, lumber and forest products, and possibly citrus fruits. Commodities which we would expect to move from the north and west over the Norfolk & Western or its connections and delivered to us at Winston-Salem, and moving to points on our line and beyond, southward, would be Virginia apples, tomatoes, canned goods, plaster, cement, and New York State and Canadian produce. Of course, coal would be the largest commodity which we would expect to handle on our line."

This traffic would all be a direct diversion from the present trunk lines of the Seaboard and the Atlantic Coast Line, as well as from the Southern.

Applicant's witness E. Thomason, Vice-President and General Manager of the Piedmont & Northern, testified as follows:

"Freight traffic of the P. & N. is now about 92 per cent, and about 80 per cent of that is interstate traffic and about 12 per cent intrastate traffic.

"In 1926 the P. & N. handled 72,000 cars interchange. We had at one time a regular Pullman

schedule with the Seaboard. My present estimate is that with the proposed line built we will handle 85,000 cars per annum in addition to the 72,000 now handled. Of the total of 157,000 cars, approximately 26,000 will be coal and coke. The balance of the 157,000 cars would be made up of grain, packing house products, fruits and vegetables, building material, cotton and waste, sandstone, merchandize, etc., largely from the east, west and the southeast.

"The Duke Power Company has a steam plant at Greenville, S. C., which is on our line, on the Southern, and on all the other lines at Greenville; the next steam plant is at Duncan which is a smaller plant; the Greenville and Greensboro plants are smaller plants. When the new lines are built I don't think the coal down there (in S. C.) will be handled differently from what it is now unless it would be 'distress coal.' The next steam plant is at Mount Holly and its coal is handled by the P. & N. and will continue to be handled by it if the new lines are built; the next plant is at Salisbury which is a much larger one and I assume the Southern hauls it now; if the new lines are built coal for it will be handled by the P. & N. because it was put there by Mr. Duke's instructions that his railroad would be built by that point, his instructions being that the steam plant was to be put there so that it would couple in with the P. & N. which would get the freight. The next steam plant is at Greensboro; it is a small plant and I think is served by the Southern.

"I heard Mr. Lee testify about the steam plants projected; one of them to be built between the Yadkin River crossing and Winston-Salem; the P. & N. would handle coal to that plant.

"If we build the lines, we will have a through southern route by the Georgia & Florida into Florida and all the other roads we connect with, and would have a through route from Florida on through the North and West" (R. 147-148).

It is unheard of that an "interurban" railway should be projected to handle this low rated, heavy commodity. Such traffic is wholly without the scope of an interurban.

George W. Burpee, an expert witness who testified for the Piedmont & Northern, partner of the firm of Coverdale & Colpitts, engineers of New York City, testified that he had been actively engaged in engineering work since 1906, having been with Westinghouse, Church & Kerr Company, engineers, up to 1921, and since then with Coverdale & Colpitts, whose business consists largely in the examination for financial interests of railroad business and dealing generally with all features of railroad business.

This witness testified as follows:

> "I believe this line as proposed to be extended would tie into the Georgia and Florida, and at its northern end into the Norfolk and Western. The three lines will thus compose a through line from the southern termini of the G. & F. to the northern termini of the N. & W. but it would be operated by the three independent corporations, but physically would constitute a through line. I do not believe it would be as strongly competitive as if owned by one corporation; the potentiality of competition would depend upon the kind of working arrangements that might be arrived at between these three roads. The business that the G. & F. and the P. & N. and N. & W. would carry or might carry is not closed to the S. A. L. or the A. C. L. or Southern, they have to compete for it. The P. & N. is of such a character that constituting a link in what has been described as a new physical through line it could carry through freight over its part of the line. The P. & N. is of standard railroad construction and excellent

construction for the tonnage that it has to carry. I do not doubt that cars which move via the P. & N. move in unbroken carloads to the Pacific Coast; I know that they move in carloads to New England; carload movements from the P. & N. to New England or in the reverse direction were left off of Exhibits 44 and 45; bridge traffic was also left off; at present bridge traffic is not a serious matter, about 2 per cent; after the proposed lines are built this bridge traffic will be substantially increased in my opinion, almost 16,600 cars per year in both directions; that bridge traffic will be taken away from other lines" (R. 157).

An interesting comparison between the present lines of the Piedmont & Northern and other railroads of the territory as to their relative earnings per mile from freight traffic is contained in Mr. Thomason's testimony (R. 143) as follows:

"The tables I have prepared show that in 1915, the first full year of operation, Piedmont & Northern earned from freight traffic $4,413.00 per mile; the Southern Railway on all lines in North and South Carolina received from the same source $5,754.00 per mile; the Seaboard Air Line $4,613.00; and the Atlantic Coast Line $4,492.00.

"For the year 1926 these figures were:

Piedmont & Northern	$17,891.00
Southern Railway	16,725.00
Seaboard Air Line Railway	12,390.00
A. C. L. Railway	13,790.00

"The percentage increase of the Piedmont and Northern was 305.41; of the Southern Railway, 190.67; of the Seaboard Air Line Railway, 168.59; of the Atlantic Coast Line Railway, 206.99."

As to what the building of the proposed extensions would do in increasing the scope of the Piedmont & Northern as a freight carrier of national importance, is shown by the testimony of this same witness, the Vice-President and General Manager of the Piedmont & Northern (R. 141), giving the estimates of the increased revenue to be derived by the Piedmont & Northern by means of the proposed extensions. He testified:

> "Our estimate indicates that the increased revenue after completion through to Winston-Salem will for the first year be $3,890,016.57, and that for the succeeding five years it will increase each year 8.4 per cent over the preceding year, resulting as follows: Second year, $4,216,777.96; Third year, $4,570,987.31; Fourth year, $4,954,950.24; Fifth year, $5,371,166.05; Sixth year, $5,822,344.01; with substantially the same basis of increase thereafter.
>
> "New industries will be constructed on the line and much new traffic will develop at all points. The Power Company has plans for a steam power plant between the Yadkin River and Winston-Salem, which will use approximately 3,000 to 3,600 tons of coal per day. A second plant is calculated to consume between 3,000 to 3,600 tons of coal per day. The average of coal cars is about 70 tons; they run up as high as 100 tons. * * * I believe the construction will benefit the Clinchfield and its shippers, and will open a new route for Clinchfield coal moving East from Spartanburg to points on the Piedmont line; will enable the Clinchfield to become a link in a very high class short line, efficient through route from the Piedmont Section to the middle West. It will substantially increase the volume of coal consumed in the Piedmont and broaden the market for coal avail-

> able to the Norfolk and Western producers in Virginia and West Virginia. It will open a new route to the North and West by the N. & W. into and through the Piedmont territory."

The Commission, in commenting on the intervention of Georgia & Florida Railroad in behalf of the application, said with reference to the through line to be composed of the Georgia & Florida, the Piedmont & Northern, and the Norfolk & Western:

> "No evidence was introduced by the G. & F. In its brief it contends that the proposed routes are necessary to provide independent and competitive through routes between the South, East, and West via the Norfolk Southern and the N. & W." (R. 60).

The above is a brief review of some of the more important evidence as to the essential character of the railroad which will be constituted if the proposed extensions are built, a railroad of distinctly national scope and importance as a freight carrier.

The record overwhelmingly and without dispute shows that the proposed extensions are not in the pursuance of any project for a local extension of an interurban electric service or railroad, but are in the pursuance of a large and ambitious plan to complete a very important new competing line of general freight carrying railroad, forming a link in a new competing joint through route and trunk line to and from and through the states of the Southeast and carrying important freight traffic destined to and from points all over the United States.

While the present lines of the Piedmont & Northern predominantly and in essence are freight carrying rail-

roads of national scope and importance, and not interurban lines, the proposed line operated as it admittedly would be operated, in intimate conjunction and connection with its connecting steam roads, would to a greatly increased extent be predominantly and in essence a freight carrier of national importance. To allow this new joint through route and trunk line of connecting carriers to be linked up and created, would fundamentally change the whole transportation system in the Southeast, with almost incalculable injury to the existing railroads, in direct conflict with the purposes and aims of Congress in passing the Transportation Act.

Point Three.

The Ownership and Domination of the Piedmont & Northern by the Duke Interests and Its Interrelation with Powerful Allied Freight Shippers Similarly Controlled by the Same Owners Produce an Aggravated Form of Competition with Steam Carriers Proposed to be Paralleled and Duplicated, Distinctly a Matter of National Concern, and a Powerful Circumstance to Show that it is not an "Interurban Electric Railway" within the Meaning of Paragraph (22).

The District Court made this observation, in its opinion, with reference to the significance of the ownership of the Piedmont & Northern by the Duke Power interests and with reference to the interrelation between the Piedmont & Northern and other interests controlled and dominated by these Duke Companies:

> "Much testimony was offered to show that the expected increase in revenue would be accom-

> plished at the expense of the Southern and other intervening railroads, particularly since it is natural to suppose that the influence of the interests associated with the great fortune left by the late J. B. Duke would be exerted in the petitioner's behalf. This consideration is not material to the decision of the question before the court except insofar as it constitutes another circumstance tending to prove that the new business of the petitioner would not be of a local character but would be derived in great measure from the carriage of long distance freight, handled in competition with steam railroads" (R. 239).

In his statement, concurring with the final report of the Commission, Commissioner Eastman had the following to say with reference to the significance of the domination of the Piedmont & Northern and of many of its shippers by the same parent Duke interests:

> "If there were need for strengthening this conclusion, such need would be supplied by the fact that this proposed new railroad is closely affiliated with powerful private industrial interests in the Carolinas. The evils of interrelation between transportation lines and industries which they serve are manifest. Such arrangements breed privilege and preference, and run counter to the spirit and I believe also, in many cases, the letter of the law. There are enough at present without adding to the sum total, and I trust that we shall soon be able to test the legality of existing interrelations of this character" (R. 77).

It would unduly expand the scope of this brief to set out in detail the evidence as to the ownership of the Piedmont & Northern by the Duke Power Company and the Duke Farms Company and as to the ramifications of these powerful Duke interests in their ownership and control of important freight shippers and

their power to control the delivering of traffic to the Duke railroad, the Piedmont & Northern.

The facts are very fully set out in the Commission's report (R. 68-72, bottom).

The facts in detail were furnished, on cross-examination, by W. S. Lee, President of the Piedmont & Northern Railway Company, and long a business associate of the late James B. Duke. The testimony of Mr. Lee, giving the details of these interrelationships is to be found principally on the following pages of the record, 118, 119, 120, 121, 125-132.

Without going into the details it is sufficient here to state that the Duke Power Company and the Duke Farms Company, two intimately related Duke interests, controlled by the James B. Duke estate and by the Duke endowment, own the Piedmont & Northern Railway Company, own large amounts of stock in many cotton mills, tobacco factories, and other mercantile and commercial companies which are important shippers of the territory, own a great many subsidiary power companies, own public utilities companies of most of the cities of the territory, own power steam plants and propose to construct other steam plants which are and will be important shippers of freight. And the record conclusively shows that these dominant Duke interests have in the past controlled, and will in the future be able to control, and would to a greatly increased extent be able to control for the proposed extended lines, traffic of all the allied interests so as to route it over the Piedmont & Northern, thereby giving it a great advantage over the steam roads in competition, and thereby largely increasing the traffic which it would otherwise carry.*

*See Appendix A for graph prepared from record, showing interrelations of Duke interests.

An additional powerful circumstance bearing on the essential character of the Piedmont & Northern is the fact that its board of directors has manifestly been strategically chosen from among the heads of powerful freight shipping industries of the Carolinas in order to influence freight shipments over the Duke railroad. Few of its directors seem to have been chosen for their railroad experience. Of the 25 directors, 21 are managing officers or executives of important textile mills and other industries of the Piedmont; one is the chairman of the Duke Endowment; one is the president of the Piedmont & Northern, vice president and chief engineer of the various Duke power companies, trustee of the Duke Endowment, and a stockholder and director in numerous cotton mills; and the twenty-fourth is the vice president and general manager of the Piedmont & Northern (R. 127 to 129).**

All of this constitutes a tremendously significant circumstance, as suggested by the District Court, to show what the essential character of the Piedmont & Northern Railroad is, and to show that it is not in essence such a thing as is known as an interurban railroad, that it is not in essence such a railroad as that the question of its extensions here proposed is within the competency of individual states, but that it is a transportation enterprise of distinctly national significance, scope and importance, necessarily within the regulatory power of the Interstate Commerce Commission within the legislative intention expressed in the Transportation Act.

**See Appendix B for chart of affiliations of Piedmont & Northern directors with shipping interests.

Point Four.

The True Test is to be Found in a Consideration of The Legislative Purpose And of The New Railroad Policy Introduced by The Transportation Act And in the Principle of Construction Laid Down by This Court in Texas & Pacific Railway Co. v. Gulf, Colorado & Santa Fe Railway Co., 270 U. S. 266.

Since the passage of the Transportation Act of 1920, this Court has interpreted that legislation in at least five principal cases in which it has construed its provisions in the light of the conditions which led to the adoption of the Act, and in the light of the evils sought to be corrected and the remedies sought to be accomplished, as disclosing the legislative purpose and as controlling the proper construction of its language. They are:

Wisconsin Railroad Commission v. Chicago, Burlington & Quincy, 257 U. S. 563; *New England Divisions Case*, 261 U. S. 184; *Dayton-Goose Creek Railway v. United States*, 263 U. S. 456; *Railroad Commission v. Southern Pacific*, 264 U. S. 331; *Texas & Pacific Railway Co. v. Gulf, Colorado & Santa Fe*, 270 U. S. 266.

As we read these decisions, they announce the following four essential propositions:

1. The experience of the railroads under federal control was such that when it was proposed to return the properties to their owners the owners protested that their properties could not be turned back to them by the Government for useful operation without provision to aid them to meet a situation in which they were likely to face a demoralizing lack of credit and income. Congress acqui-

esced in this view and the Transportation Act of 1920 was the result.

2. The Transportation Act added a new and important object to previous interstate commerce legislation which theretofore had been designed primarily to prevent unreasonable or discriminatory rates and rebates. The new Act sought affirmatively to build up a system of railroads prepared to handle promptly all the interstate traffic of the country. It aimed to give the owners of the railroads an opportunity to earn enough to maintain their properties and equipments in such a state of efficiency that they could well carry this burden. To achieve this great purpose it put the railroad systems of the country more completely than ever under the fostering guardianship and control of the Commission.

3. One of the principal and most important purposes of this new legislation was to prevent unnecessary paralleling, duplication of facilities, and competition to the injury of established and existing railroads.

4. Recognizing that such injury to the existing carriers would probably result ultimately in harm to the public, proposed extensions will not be allowed to be made except where they are necessary and demanded by the public convenience and necessity, and in this connection public convenience and necessity means an urgent public need for the additional facilities to be furnished by the proposed extensions.

We can not imagine that Congress, in seeking to achieve these great purposes, undertook to put the

railroad systems of the country under the fostering guardianship and control of the Interstate Commerce Commission, to prevent unnecessary paralleling, duplication, and competitive building only to the extent that such paralleling, duplication, and competitive building should be undertaken by steam railroads, but left electric railroads entirely free to commit all the evils sought to be remedied without federal supervision and regulation.

Every historical and logical reason for giving to the Commission the exclusive power to grant or to deny authority to railroads to build extensions demands that it should have such authority over an application such as that disclosed by the record in this case. The whole background of the Act shows that this jurisdiction of the Commission was intended by Congress to be controlled by the essential character of the business to be done over the proposed extension, and was not to be governed by such a mere incidental characteristic as the motive power to be used.

In the case of *Texas & Pacific Railway Company v. Gulf, Colorado & Santa Fe Railway Company,* 270 U. S. 266, *supra,* construing the meaning of the language used in Paragraph (22) of section 1 of the Act, this Court, as one of the tests for construction, held that the language should be construed contextually.

It is very pertinent, therefore, to consider the term "interurban electric railways" in the context in which it is written in Paragraph (22):

> "The authority of the Commission conferred by Paragraphs (18) to (21), both inclusive, shall not extend to the construction or abandonment of spur, industrial, team, switching or side tracks, located or to be located wholly within one state, or of

> street, suburban, or interurban electric railways, which are not operated as a part or parts of a general steam railroad system of transportation."

The first part of this sentence is concerned with the purely local and incidental construction or abandonment of short spur, industrial, team, switching or side tracks located wholly within one state, and hence of purely local concern. If even such spur, industrial, team, switching or side track should cross a state line, it would instantly step out of the excepted class and come within the provisions of Paragraphs (18) to (21).

As a part of the same class of extensions excluded from the requirements as to certificates of public convenience and necessity, in the last part of the sentence the expression "interurban electric railways" is grouped intimately with street railways and suburban railways, all of these being, like spur, industrial, team, switching or side tracks wholly within one state, matters of local significance and not of such broad or national significance as to be practically related to the legislative purposes expressed in the Act, or as to be calculated to cause serious injury to other existing railroads.

We think it entirely clear from the context that the exclusion language was never intended to cover a proposed interstate extension of a freight carrying railroad of the magnitude of the Piedmont & Northern, and especially such an extension thereof as would complete and put into operation a new interstate and trans-state trunk line of carriers of tremendous national importance running throughout a territory like the states of the Southeast.

We think the principle of construction expressed in

this Court's opinion in the case of *Texas & Pacific Railway Co. v. Gulf, Colorado and Santa Fe Railway Co.*, 270 U. S. 266, is entirely controlling here. There the Court was construing the exclusion language with reference to whether, under the facts there involved, the railroad construction there proposed would be an extension or would be an industrial track. The track proposed to be built was an "industrial track" in the literal sense, in that it was a comparatively short track leading to and tapping certain particular industries, just as in this case the proposed extension is "interurban" in the literal or derivative sense that it would run between cities. But it further appeared in the Santa Fe case that the proposed track was an attempt to invade new traffic territory not previously served by the carrier and already adequately served by other established carriers and that it was a matter of national significance in its relation to the general transportation system.

This Court in that case gave due attention to the arguments by the railroad sought to be enjoined, arguments strikingly similar to those advanced on behalf of the appellant here, arguments based on certain informal instructions issued by the Commission differentiating spur tracks, based upon certain accounting methods, and based upon the use of the terms "spur track" and "industrial track" in other connections by the courts, by the Commission, and by the State Legislature. But it was held that the truer guide to the meaning was to be found by construing the language contextually and by relating the language to the railroad policy introduced by the Transportation Act. It was there said:

"In support of its contention that the proposed line constitutes an industrial track, the Santa Fe cites instructions differentiating branches from spurs, which are given by the Interstate Commerce Commission in forms long prescribed for accounting purposes. It points also to uses made of these terms in other connections by courts, by the Commission, and by state legislatures. A truer guide to the meaning of the terms extension and industrial track, as used in paragraphs 18 to 22, is furnished by the context and by the relation of the specific provisions here in question to the railroad policy introduced by Transportation Act of 1920. By that measure, Congress undertook to develop and maintain, for the people of the United States, an adequate railway system. It recognized that preservation of the earning capacity, and conservation of the financial resources, of individual carriers is a matter of national concern; that the property employed must be permitted to earn a reasonable return; that the building of unnecessary lines involves a waste of resources and that the burden of this waste may fall upon the public; that competition between carriers may result in harm to the public as well as in benefit; that when a railroad inflicts injury upon its rival, it may be the public which ultimately bears the loss. See *Railroad Commission v. Chicago, Burlington & Quincy R. R. Co.*, 257 U. S. 563; *The New England Divisions Case*, 261 U. S. 184; *The Chicago Junction Case*, 264 U. S. 258; *Railroad Commission v Southern Pacific Company*, 264 U. S. 331. The Act sought, among other things, to avert such losses.

"When the clauses of paragraphs 18 to 22 are read in the light of this congressional policy the meaning and the scope of the terms extension and industrial track become clear. The carrier was authorized by Congress to construct, without au-

thority from the Commission, 'spur, industrial, team, switching or side tracks * * * to be located wholly within one State.' Tracks of that character are commonly constructed to improve the facilities required by shippers already served by the carrier or to supply the facilities to others, who being within the same territory and similarly situated are entitled to like service from the carrier. The question whether the construction should be allowed or compelled depends largely upon local conditions which the state regulating body is peculiarly fitted to appreciate. Moreover the expenditure involved is ordinarily small. But where the proposed trackage extends into territory not theretofore served by the carrier, and particularly where it extends into territory already served by another carrier, its purpose and effect are, under the new policy of Congress of national concern. For invasion through new construction of territory adequately served by another carrier, like the establishment of excessively low rates in order to secure traffic enjoyed by another, may be inimical to the national interest."

This equally is the truer guide to the meaning of "interurban electric railways" used in the immediate context in the same exclusion clause of Paragraph (22). The true test is not to be found in an exact measurement of the ratio of freight traffic to passenger traffic. It is not to be found in the fact that an electrically operated railroad may perform as a very small part of its business the peculiar functions of an interurban, while at the same time it goes much beyond that and performs all the functions of a steam railroad of national importance.

The true guide to the statutory meaning, as we see it, is to be found in the distinction between an elec-

trically operated railroad which is so essentially and distinctively of local significance as not to conflict with the national purposes sought to be effectuated by the Act and as to be within the regulatory competency of state authorities, on the one hand; and, on the other hand, electrically operated railroads which go further and beyond this local scope, which propose to extend into territory not theretofore served by them, particularly into territory already adequately served by other carriers, and which are interstate freight carriers of such scope as to be of national significance and concern.

Construing the language as this Court in the Santa Fe case says it should be construed, in the light of the evils to be remedied by the Act and in the light of the new legislative policy enacted therein for the remedy of those evils, we are forced to conclude that this proposed extension of the Piedmont & Northern would constitute in a highly aggravated form the very kind of evil sought to be remedied, and that the Congress could not have used the words "interurban electric railways" as intending to exclude an extension of the character here involved.

Point Five.

Extensions of a Railroad Which Would Have Such a Destructive Effect as these Proposed Extensions on Existing Steam Railroads Cannot be Deemed Extensions of Lines of an "Interurban Electric Railway" Exempted from Federal Supervision by Paragraph (22).

As argued in section four of this brief, the true test for the construction of the exclusion language of Para-

graph (22) is to be found in a consideration of the purposes sought to be accomplished and the evils sought to be remedied by Congress in enacting the Transportation Act with the new railroad policy which it expresses.

Undoubtedly "interurban electric railways" were excluded by Paragraph (22) as comprising a class of railroads of such local and "interurban" importance as not to be calculated to inflict serious injury upon the general system of freight carrying steam roads by extensions not demanded by the public convenience and necessity and not authorized by certificate of the Commission. It cannot be supposed that the Congress deliberately intended to discriminate in favor of electrically motivated railroads as against steam railroads by excluding electrically operated roads from federal regulation of extensions while including all steam roads.

We think such broad construction will be given to exclusionary language in the statute as would nullify the legislative purposes written into the Act. That the construction contended for by the appellant would so nullify the purpose of the Transportation Act is at once seen when we consider the undisputed facts on this record as to the disastrous effect which would be worked upon the steam railroad systems of the territory by allowing these unregulated extensions into new territory not now served by the Piedmont & Northern and already adequately served by steam carriers sought by Congress to be protected by the Act.

A consideration of these facts, the paralleling and the extent of the injury that would be done to the steam railroads if these extensions should be built following a holding in this cause that they are not sub-

ject to federal regulation, has a direct bearing on the question whether Congress intended to exclude a railroad of this character when it excluded "interurban electric railways, which are not operated as a part or parts of a general steam railroad system of transportation."

A brief scutiny of the railroad map of the territory showing existing railroads and the existing and the proposed lines and extensions of the Piedmont & Northern (Exhibit 70), will instantly show the extent to which the proposed extended lines of the Piedmont & Northern would parallel the lines and duplicate the facilities of the intervening steam railroads. Upon the face of that map itself the direct injury to these steam railroads to be caused by the proposed extensions, if constructed, may be readily seen.

We quote the facts as stated by the Commission as to the unprecedented paralleling of the Southern's lines in particular by the proposed extension:

> "Existing lines of the applicant closely parallel lines of the Southern. From Greenwood to Spartanburg the average distance between the two is about 0.5 miles; from Greenville to Greenwood about 0.13 miles, with four crossings; from Belton to Anderson about 0.5 miles. In all these cases the routes are almost identical. From Charlotte to Gastonia the average distance apart is about 2.6 miles, the maximum about 4.7 miles. This segment of the applicant's line also parallels the Seaboard closely from Charlotte to Mount Holly. The proposed line from Gastonia to Spartanburg would parallel the Southern at an average distance of about 1.1 mile, the maximum distance from any station being 3.5 miles. The proposed line from Charlotte to Winston-Salem parallels generally the Southern's main line from Charlotte to Lex-

ington, about 51 miles. From Charlotte to Kannapolis, 23 miles, its general course is nearly straight and its maximum distance from the Southern's main line is about 8 miles, average distance 3.8 miles. For the next 22 miles northward its route lies generally within less than 0.5 miles of the Southern's main line, passing about 4 miles westerly from Lexington, the junction point of the Southern and the Southbound. From this point to Winston-Salem it nearly parallels the Southbound, at an average distance of 2.6 miles therefrom. Its average distance from the route formed by combining the Southern and the Southbound is about 2.4 miles. The Southern has a single track line from Charlotte to Winston-Salem, which passes through Mooresville and Mocksville. The proposed route is from 0 to 13 miles easterly from this line, the average distance being about 8 miles. Only about 6.5 miles of the proposed Charlotte-Winston Salem line is more than 5 miles from some railroad. All of the distances from other railroads, stated above, are straight line distances'' (R. 41-42).

The Commission fully reviewed the evidence as to the traffic loss which would immediately be sustained by each of the steam railroads of the territory by direct diversion to the proposed extended Piedmont & Northern. The District Court found substantially the same facts and the annual losses are, as undisputed on the record,

Seaboard Air Line Railway Company	$1,349,250.00	(R. 60-1)
Southern Railway Company	$10,000,000.00	(R. 73-4)

The diversion from and loss to the Atlantic Coast Line Railroad Company (R. 61-2), Charleston & West-

ern Carolina (R. 62-4 and 191-4), Louisville & Nashville (R. 62-4), and Carolina, Clinchfield & Ohio (R. 62-4) will be a very large sum.

Another significant record fact which shows that Congress did not intend to exclude an extension of the kind here in question is: The Louisville & Nashville and Atlantic Coast Line have jointly leased the Clinchfield assuming thereby financial obligations of approximately $53,293,000. In a properly instituted proceeding admittedly within the jurisdiction of the Interstate Commerce Commission, Finance Docket No. 5322, *Construction and Operation by L. & N. R. R.*, 124 I. C. C. 581, the Commission exercised its jurisdiction and granted to the Louisville & Nashville a certificate of public convenience and necessity for the building of a new line from Chevrolet, Kentucky, to Hagans, Virginia, connecting its southeast Kentucky or Harlan County line with the southwest Virginia line, connecting at Norton, Virginia, with the Interstate Railroad and with the Clinchfield. The commission there found within its admitted jurisdiction that the public convenience and necessity demanded that this extension by the Louisville & Nashville be authorized to provide a new route from the coal fields.

The record here shows that the building of the proposed extensions by the Piedmont & Northern would result in immediate diversion to the Piedmont & Northern of considerable of the traffic to be handled by the Louisville & Nashville extension.

As to this the Commission said (R. 75):

> "They (the proposed extensions) would also tend to diminish the usefulness of the connection which is to be built between the L. & N. and the Clinchfield, and to postpone carrying out the ul-

timate plan for that connection, which would effect a further reduction of 52 miles in the L. & N.-Clinchfield route. This enterprise has more value to the system of through transportation than anything which would be accomplished by the proposed extensions."

From the language of the Transportation Act and the interpretation thereof by this Court, it is clear that the intent of Congress was to protect and preserve the existing system of transportation. The language it used and the interpretations thereof by this Court can only mean that Congress intended to put under the jurisdiction of the Commission all carriers whose business was such as unregulated would destroy the value of the certificate of public convenience and necessity already issued by the Commission.

The sustaining of the appellant's contention would mean that the Commission is powerless to defend and protect and preserve these extended lines of the Louisville & Nashville against depletion and impairment by the paralleling and duplication of its facilities by the Piedmont & Northern, simply because the Piedmont & Northern is electrically operated. Such a result is inconceivable.

All of the above leads to the conclusion that in writing the exception in Paragraph (22) Congress only intended to exclude electric interurbans as such and as generally understood by that term, and did not intend to exclude interstate extensions of important and powerful general interstate carriers of freight, in all respects conducting the same essential business as the steam railroads, the only distinctive difference being that they happen to be operated by electric motive power.

Point Six.

Appellant's Attempt to Treat a Wholly Inconsiderable Part of its Business as Being its "Distinguishing Characteristic" And to Eliminate the Predominant part of its Business as Controlling its Distinctive Character and Classification is Unsound.

We have here, then, a railroad which is admitted by its officers to be an "interurban plus", more than an interurban; a railroad which predominantly and in essence is of a character and has a business entirely outside of the meaning of the term "interurban."

We have a railroad which, if extended as proposed, would be to a greatly increased extent (to the extent of at least 95 per cent. of its entire business) a thing never signified by the use of the word "interurban."

And yet, because a wholly inconsiderable part of its total business would continue to be such a local city-to-city traffic in freight, passengers, baggage, mail and express as may be within the meaning of the term "interurban," the appellant contends that this inconsiderably small part of its business constitutes the "distinguishing characteristic" which determines its classification as a railroad. "Classification, where required," says the appellant on page 24 of its brief, "must be predicated upon distinctive rather than common characteristics."

We ground our argument upon the proposition that classification is to be predicated, not upon minute differences, not upon the characteristics of an inconsiderably small part of a railroad's total business, but upon the essential character of the railroad as shown by its predominant business and its relation to the rest of the railroad system of the country.

The Congress, in writing Paragraph (22), did not undertake to exclude from the provisions of Paragraphs (18) to (21) an electric railroad which is an "interurban plus" (see R. 152); did not undertake to exclude a railroad which is *more than an interurban.* It did not undertake to exclude an electrically operated railroad which "performs all the characteristic services of an interurban railroad and equals that of the standard railroads in other respects." (See R. 152.)

It did not undertake to exclude extensions of the line of essentially freight bearing railroads of national scope and importance, which extensions would have the effect to create, by tying in with two connecting steam roads, a new trunk line of carriers, handling freight moving in large volume by carload and trainload to and from points all over the United States, duplicating the adequate facilities of, and diverting important traffic and revenues from, the established lines of the steam railway system.

The appellant has undertaken throughout this controversy to lay great stress on what it terms the "peculiar characteristics" of its local interurban service which it asserts distinguish that service from the similar local, interurban service performed by the steam railroads of the territory.

Its witnesses undertook to point out that it is able to handle its electric locomotives over sharper curves than are practicable for steam locomotives (R. 121-140), but the steam roads showed without contradiction that in numerous instances they constantly operate steam locomotives over curves as sharp or sharper than any of those on the lines of the Piedmont & Northern (R. 166, 167-168, 196).

The Piedmont & Northern's witnesses undertook to

point out an alleged peculiar characteristic in the pick up of cars at and the delivery of cars to the individual industries (R. 14). But it was shown without contradiction that the steam roads pick up and deliver from and to the industries in exactly the same manner. (R. 165, 168, 170-171, 173.)

The Piedmont & Northern undertook to show that it had more frequent between-city stops for local (interurban) station-to-station freight (R. 138, bottom) but the undisputed evidence showed that the local freight stops of the Piedmont & Northern averaged exactly the same number a mile as the freight stops of the Southern Railway Company in the same territory, exactly one on an average of every 2.8 miles for each railroad. (R. 174.)

The only fact to which the Piedmont & Northern could point as showing any real difference between its purely local service and the local service of the steam roads was the fact that it has connection with the street railway lines of the Duke owned public utilities companies in some of the cities served (R. 121, 140) and that as a result cars may be moved over city streets instead of over ordinary industrial tracks. However, the Vice-President and General Manager of the Piedmont & Northern testified that its through freight traffic is not carried through the city streets but is carried around belt lines running around the cities (R. 140, 234) and he characterized this service in using street car lines within a city as the "urban operation" as distinguished from the "interurban operation" between cities. (R. 140.)

We repeat that it is entirely unsound for the appellant to attempt to treat the minute differences in a wholly inconsiderable part of its total business as con-

stituting its "distinguishing characteristic" as a railroad. Its distinguishing characteristic is to be found in the essential character of the railroad and of the predominant part of its business.

Point Seven.

The Attempt to Limit the Word "Interurban" to its Etymological Sense, or to Eliminate it Altogether From Consideration in Construing The Statute, And to Make the Word "Electric" The Key to The Construction, Leads Ad Absurdum.

As the District Court says in its opinion (R. 230), the appellant's railroad is "obviously electric." The question is whether it is "interurban" within the meaning of Congress.

The appellant, on its brief, takes the position that because a small part of its business is local station-to-station business it is an "interurban," no matter how extensive may be the predominant part of its business.

This is to argue that Congress gave to the word "interurban" its purely etymological sense of "between cities."

This would render the use of the qualifying word "interurban" entirely meaningless, because all railroads, whether electric or steam, operate between cities and hence are "interurbans" in the strictly etymological sense. And if this sense were intended the same effect would have been produced by the use in Paragraph (22) of the mere words "electric railways" without the qualification "interurban."

Indeed, the appellant on its brief (Point One, page 22) implies that the word "interurban" is not to be interpreted as a word of qualification restricting the scope of the words "electric railways."

The intervenor, National Association of Railroads and Utilities Commissioners, takes the broad position that the words "interurban electric railways" were written into Paragraph (22) pursuant to a lobby demand that all electric railways be excluded, and it argues that therefore when Congress used the words "interurban electric railways" it meant to exclude federal regulation of extensions of all electric railways without qualification. This intervenor asserts (page 55, top, of its brief) that nobody asked Congress to include any electrically operated railways within the provisions of Paragraphs (18) to (21); that somebody did ask that all electrics be excluded, and it argues that this demonstrates that Congress meant to comply with the demand and to exclude all electrics, no matter how large and national might be the scope of their business.

This is to give entirely too much significance to a lobby demand and to overlook the whole spirit of the Act and the remedies sought to be effected and the evils sought to be cured by the legislation.

And yet this argument is perfectly consistent with all the rest of the appellant's argument, since if extensions of a railroad of the character and having a business of the essential nature of the Piedmont & Northern are within the exclusion language of Paragraph (22), then no line whatsoever can be drawn, and any independently operated electric railroad would be free to build any kind of extension without federal supervision. If this be the proper construction of the Act, and if either the Pennsylvania Railroad or the Baltimore & Ohio should completely electrify its line, it would instantly become an "interurban electric railway which is not operated as a part or parts of a gen-

eral steam railroad system of transportation" and would instantly be freed from the provisions of Paragraphs (18) to (21) and released to make unregulated extensions *ad libitum*.

This whole argument, we say, leads to an absurdity. It attributes to Congress a deliberate purpose to discriminate in favor of electric railroads against steam roads. It attributes to Congress an intent to remove altogether from Federal supervision extensions of any railroad motivated by electricity, when in the nature of things electric motive power will come into larger and more extensive use, and when clearly an electrically motivated railroad has all the capacity of a steam road to bring about all the evils of needless expansion and duplication sought to be remedied by the Transportation Act in the interests of the general public.

As a practical matter the only substantial difference between the Piedmont & Northern and a steam railroad is to be found in the character of its motive power. The Congress, we repeat, did not make this the test of exclusion from the provisions of Paragraphs (18) to (21).

Point Eight.

The Argument of the Appellant Based Upon Comparison of The Varying Language of The Different Sections of The Transportation Act And Other Statutes Falls Far Short of The Result That an Electric Railway of The Essential Character of The Piedmont & Northern is Excluded From Federal Regulation as to Extensions as Being an "Interurban Electric Railway."

The principal argument of the appellant here (see its brief, Point Two, pp. 32-41) consists in a very pre-

cise matching up of the varying qualifying language used in connection with the word "interurban" in other parts of the Transportation Act and in other statutes supposedly *in pari materia.*

The argument of the appellant based on the comparison of these various sections goes no further than to reach the conclusion that an "interurban" may still remain an interurban although it derives the majority of its operating revenues from the general transportation of freight.

There may be "general transportation of freight", yet of a purely local station-to-station significance and which is clearly within the regulatory competency of the several states, a matter of local concern rather than national importance, and inconsiderable in its potential or practical effect on the steam railroads and their ability to function efficiently as parts of the system of transportation of the United States as a whole. This would be "general transportation of freight" yet remaining distinctly "interurban" in its character within the meaning which we attribute to that word in the statute.

The argument therefore falls far short of the conclusion that a railroad deriving from 85 to 95 per cent. of its revenue from interstate freight interchanged with steam railroads and moving in carloads all over the United States is an interurban.

It falls far short of the conclusion that an extension to form a new trunk line from Florida to the North, East and West is an extension of an "interurban electric railway."

It falls far short of the conclusion that an extension which would immediately divert such amounts of nationally important freight traffic from the steam

roads as the record here shows, with such serious and injurious results to these steam roads as are here shown, would be an extension of an "interurban electric railway" within the exclusion language of Paragraph (22).

It falls far short of the conclusion which the appellant and the intervenor on its behalf in this record find themselves forced to attempt to draw, that no reasonable line can be drawn and that all independently operated electric railroads are excluded by Paragraph (22).

The District Court aptly dealt with this argument of the appellant as follows (R. 246):

> "* * * But these considerations do not necessarily lead to the conclusion sought to be reached. It is true that an interurban carrier may be entitled to that descriptive name although it participates in general freight traffic; but it does not follow that every electric carrier, so engaged, is an interurban railroad. Freight traffic may be limited in extent and within the scope of a carrier devoted primarily to local business, and at the same time, be general in its nature. The carrier may transport the kinds of property usually carried by steam roads in addition to the carriage of baggage, mail and express, and yet be so restricted in its operations that it may not be properly classified with general steam carriers whose operations cover a wide field. See the discussion in *Lackawanna & Wyoming Valley Ry.*, 105 I. C. C. 178.
>
> "The difference in language between the exception in Section 15a and the exception in Section 1, Paragraph 22, may not be ignored, but it is accounted for by the fact that in one case Congress was dealing with rates, and in the other, with the construction of new lines. It evidently concluded

that if an electric interurban road should build up a business of transporting property to such an extent as to be engaged in the general transportation of freight, it should be included in the general rate adjustment provided in Section 15a with a view to uniformity of rates and the connection of the carrier with steam railroads. On the other hand, Congress was of the opinion that so long as an electric carrier should remain independent of steam railroads in its operation and control, and should be engaged in the local carriage of passengers and freight, as its primary business, the extension of its line would remain a matter of local concern and should be left to the regulation of local authority."

Point Nine.

A Proper Application of The Ordinary Canons of Statutory Construction Inevitably Leads to The Conclusion That The Piedmont & Northern is Not an "Interurban Electric Railway" Within The Meaning of The Exclusion Language of Paragraph (22).

We have considered the application of two settled canons of statutory construction to Paragraph (22) as applied to the facts on this record:

1. That in construing the language of the statute it should be construed contextually; and
2. That in construing the language of a remedial statute it is necessary to look to the evils sought to be remedied, to the purposes of the legislation, and to construe the remedial language liberally so as to make it effectuate those purposes by remedying the evils.

A proper application of these rules of construction leads unerringly to the conclusion that the proposed

extensions are not within the meaning of the exclusion language of Paragraph (22).

Another well settled canon of construction leads to the same conclusion, to-wit: That whereas the remedial part of a remedial statute should be liberally construed in order to effectuate the remedy, by the same token exceptions in a remedial statute should be narrowly construed, because such a construction of an exception is equally necessary to give effect to the remedial purposes of the legislation. *Spokane & Inland Empire R. Co. v. United States,* 241 U. S. 344, 350.

The appellant contends for the broadest possible construction of this exception language of Paragraph (22), that it should be held to include all independently operated electric railroads running between cities. It is entirely manifest that such broad construction of exception language would nullify the purposes of the Act as effectually as would a too narrow construction of the remedial provisions. A narrow construction of the exception, in accordance with the rule, instantly rejects this proposed extension as being within the exception. Any kind of ordinary, reasonable construction similarly rejects it.

The District Court pointedly applied this rule of construction as follows:

> "Now it is obvious that the purpose of the law will be defeated by too liberal an interpretation of the term 'interurban electric railway.' It could not be given the broadest of all meanings for it would then comprehend any railway using electric power which runs between cities, without regard to the character or extent of its business. The electrification of steam roads in 1920 had already progressed to a considerable extent and it

cannot be supposed that it was the intent of Congress to except all railroads which should adopt electric motive power from the control of the Commission over new constructions and extensions. On the contrary, it is an elementary rule that exceptions from the general policy embodied in a statute are to be strictly construed and are not to be so interpreted as to destroy its remedial purpose. *Spokane & Inland R. R. v. U. S.*, 241 U. S. 344, 350." (R. 243)

Point Ten.

A Consideration of The History Behind The Transportation Act And The Exception Contained in Paragraph (22) And of The Prior Legislative Proceedings Inevitably Leads to The Conclusion That This Extension Project of The Piedmont & Northern is Not Within The Exclusion Language of Paragraph (22).

Paragraphs (18) to (21) owe their origin to the conclusion of Congress, based upon committee investigations, that there existed a need for federal supervision over capital investments and railroad extension and for the imposition of restraint upon extensions which would invade the traffic areas and unnecessarily deplete the earnings of other lines, it being recognized that ill-considered and uneconomic expenditures for new construction of one carrier, affecting the income and increasing the unit cost of transportation of its competitor, could readily impair the ability of either or both carriers to keep their interstate lines in efficient operation and to perform properly their respective parts in the nation's railroad business.

The wisdom of thus restricting the construction of new lines of railroads or extensions was recognized

by the legislatures of many states long before the enactment of the Transportation Act. New York, Illinois, Wisconsin, Pennsylvania, Kansas, and several other states, had passed statutes requiring a showing of "public convenience and necessity", as a prerequisite to the building of railroad lines. As early as 1894 we find a case arising under the public convenience and necessity section of the general law of the State of New York, *In re New Hamburg & P. C. R. Co.*, 27 N. Y. S. 664.

In a case decided the following year (1895), *In re Amsterdam, J. & G. R. Co.*, 33 N. Y. S. 1009, the court said:

> "The privilege of constructing and operating a railroad is not one that exists in the incorporators as a common right; it is a privilege or franchise that is granted by the state, and can only be obtained by complying with the laws adopted by the state regulating the granting of such franchises. Prior to the enactment of section 59 of chapter 676 of the laws of 1892 it was within the power of 15 or more citizens to form a railroad corporation, and to lay its tracks through any section, upon securing from the property owners the necessary right of way. This section affected a change. It was evidently intended to restrict the building of roads not actually needed, in order to protect, not only existing railroads, but also citizens from investing in alluring but profitless enterprises. The propriety and necessity of constructing a road was not left to be determined by enterprising but perhaps ill-informed or ill-advised citizens, or by those seeking by threats of destructive competition to levy tribute upon existing roads, but was placed in the hands of accredited officers of the state, who should act for and in its behalf in determining whether the in-

> terests of the state and of the community immediately affected would be promoted by the building of a road. Provisions had theretofore been made, to be hereafter referred to, for the correction of abuses in the management of roads already constructed, so that it was no longer necessary to correct evils in the management of existing roads by constructing competing ones."

Similar statements of the purposes of the statutes requiring certificates of public convenience and necessity as a prerequisite to the building of new lines of railroads or extensions are to be found in the following cases:

In re Long Lake R. Co., 42 N. Y. S. 125; *In re Kings, Q. & S. R. Co.*, 39 N. Y. S. 1004; *People ex rel. Steward v. Board of Railroad Commissioners*, 58 N. Y. S. 94; *In re Rochester, C. & E. Traction Co.*, 102 N. Y. S. 1112; *In re Auburn & W. Ry. Co.*, 55 N. Y. S. 895; *People ex rel. N. Y. Central & H. R. Co. v. Public Service Comm.*, 88 N. E. 261 (N. Y., 1909); *People v. Public Service Comm.*, 125 N. E. 438 (N. Y., 1919); *Roy v. Illinois Commerce Comm.*, 153 N. E. 648 (Ill., 1926); *In re Eastern Ry Co. of Minnesota*, 116 N. W. 841 (Wis., 1908); *In re Milwaukee Railway Electric & Light Co.*, 206 N. W. 201 (Wis., 1925).

These state laws requiring a showing of public convenience and necessity as a condition precedent to the building of new lines of railroad or extensions formed the background for a similar federal statute and had their influence upon Congress in the enactment of the Transportation Act. They were referred to by the chairmen of both the Senate and the House committees, which were considering the public convenience and necessity provisions of the bill which finally was

passed as the Transportation Act, and which provisions were written into the bill in response to the recommendation of the Interstate Commerce Commission, urged upon Congress through its representative, Commissioner Clark.

In explaining before the House Committee the necessity for placing the matter of the construction of new lines and track extensions under the jurisdiction of the Commission, Commissioner Clark made the following statement:

> "The idea is to prevent the building of duplicate lines of railroad because of keen rivalry of certain financial interests or when the railroads so built will not serve the present or future convenience and necessity, and *will simply depend for traffic upon that which they can get away from the railroads already built,* adding to the total burden of maintenance, capital returns, etc., which the public must pay." (Report of House Committee Hearings on H. R. 4378, Vol. 1, page 14.) (Italics ours.)

Continuing, in response to questions by Representative Rayburn of Texas, who inquired whether the proposal with reference to authorizing the Commission to require extensions was not of almost as great importance as the proposition of denying the right to extensions where they are applied for, Commissioner Clark said:

> "Oh, yes. I think it is simply rounding out the enforcement of the principle underlying this, *that a railroad having entered a given field shall be protected against unreasonable competition by the construction of another line that is not needed.* The public would be protected against the obligation to

> maintain two lines where one was sufficient, and would be further protected in that the carrier having entered that field would be required to occupy it further, in so far as the public interest required." (Vol. 1, p. 123, *supra.*) (Italics ours.)

Commissioner Clark further stated that the capital for new railroad construction could be more readily obtained if there were protection against unnecessary competition, or the assurance that if a railroad is built it will be "protected against what I might term *piratical building* by a competitor of a road that is not needed." (Vol. 1, p. 98, *supra.*) (Italics ours.)

Speaking of the same provisions of the Act, the Chairman of the House Committee on Interstate Commerce, in presenting his report before the House Committee of the Whole, said:

> "We can get better service by strengthening the existing lines than by creating a rival or parallel line which would diminish the ability of the first line to make further improvements and betterments." (Congressional Record, Vol. 58, p. 8313.)

And Senator Cummins, Chairman of the Senate Committee on Interstate Commerce, referring to the same provisions of the Act, said on the floor of the Senate:

> "The purpose of this provision in the bill is to recognize as the controlling consideration the right and interest of the public to have reasonable and adequate transportation facilities and to escape payment for transportation facilities that are not needed and are mere duplication of existing facilities." (Congressional Record, Vol. 59, p. 863.)

One of the first cases in which the courts undertook to construe paragraphs (18) to (21) of Section 1 of the Interstate Commerce Act, as amended, was *Detroit & M. Ry. Co. v. Boyne City, G. & A. R. Co.*, 286 Fed. 540. In this case the Court said:

> "It is certain that the purpose actuating Congress in adding to the Interstate Commerce Act the provisions herein involved, was, as was pointed out by Interstate Commerce Commissioner Clark while speaking before the Committee on Interstate and Foreign Commerce of the House of Representatives, when such committee was considering the enactment of these amendatory provisions, and shortly before such enactment, 'to prevent the building of duplicate lines of railroad because of keen rivalry of certain financial interests, or when the railroads so built will not serve the present or future convenience and necessity, and will simply depend for traffic upon that which they can get away from railroads already built, adding to the total burden of maintenance, capital returns, etc., which the public must pay.'
>
> "Congress had in mind and was endeavoring to correct the disastrous evils, to both the railroads and the public, which for many years had attended the construction of lines of railroad, main and branch, in ruinous competition with each other and with resultant injury to the public, which was compelled to bear the inevitable consequences of such a situation."

When Congress excluded "interurban electric railways—not operated as a part or parts of a general steam railroad system of transportation" from the requirements of Paragraphs (18) to (21) of Section 1 of the Act, it must have had in contemplation interurban electric railways in the sense the term is com-

monly understood. The history of the enactment shows this conclusively. It meant to exclude such lines as physically and due to character of business could not and would not create the evils sought to be prevented.

The limitation upon the authority of the Commission over the construction and extension of lines of railroad was urged upon the Committee on Interstate and Foreign Commerce of the House of Representatives, in the deliberations upon House Bill 4378, by Mr. Charles E. Elmquist, President and General Solicitor of the National Association of Railroad and Public Utility Commissioners. In recommending that an exception be made in the case of interurban electric railways, he said:

> "The same amendment refers to electric interurban lines. There are a great many electric interurban lines, the average length of which in this country is about 48 miles. Generally speaking, *they perform a local service under the laws of the State. They are subject to the regulatory powers of the local commissions.* We can see no good reason for transferring to the Interstate Commerce Commission the power to determine the extension or the abandonment of those lines which *are specially designed to take care of local service.* You are trying to take care of evils or injuries and it strikes us that you are imposing a greater hardship upon the public, and, perhaps, upon the industry itself, in asking the interested bodies to come here to Washington to have those matters disposed of." (Report of House Committee Hearings on H. R. 4378, Vol. 9, page 1613.) (Italics ours.)

How strikingly different were these representations to Congress made by this National Association of Rail-

road and Public Utility Commissioners from the contention here made by the same association as intervenor in this cause, that "interurban electric railways" means all electric railways, no matter how extensive their scope.

See also the letter from the American Electric Railway Association, Committee of National Relations, addressed to Senator Cummins, in which it is stated:

> "The distinction between steam and electric interurban roads is well known and is constantly recognized by the courts, Congress, and the several State legislatures in dealing with the transportation question. Upward of 60 per cent of all electric railway mileage in the country is strictly city mileage, *and not to exceed 5 per cent of the gross earnings of all electric railways, city, suburban and interurban, is derived from interstate traffic.*
>
> "No one will contend that city electric railways are to be classed, for purposes of operation, with steam railroads. *The interurban electric railways are, to a large extent, affected by their local surroundings; they must depend largely upon revenue earned from local communities served,* and they are affected to a greater extent by the competition of motor vehicles, they must be considered by themselves." (Volume 18, *ibid*, page 3418) (Italics ours.)

And see resolutions adopted by Associations of Business Organizations of Los Angeles which recites:

> "Whereas, these interurban and street railway companies must depend upon revenues earned from local communities served, their operations are very different from those of the steam lines; they are subject to certain limitations under fran-

> chises and the competition of motor vehicles of all kinds as to their rates of fare and freight rates; * * *" (Volume 19, *ibid*, page 3554.)

All this goes to show that Congress, when it excepted "interurban electric railways", did not have in contemplation lines of railroads which differ from steam roads only in motive power, but that instead it only contemplated actual interurbans performing a local service. It shows that certainly such an extension as that here involved, of a railroad of the character of the Piedmont & Northern, was not contemplated.

To hold that the Piedmont & Northern can escape the jurisdiction of the Commission on the theory that it is an interurban electric railway would be to nullify in their entirety Paragraphs (18) to (21). *It would follow that any railroad in the country, desiring to reach a particular territory, and doubting its ability to obtain a certificate of public convenience and necessity, has only to charter an independent company, build an electric line and operate it by electric motive power.*

Undoubtedly, the Interstate Commerce Commission correctly interpreted the term "interurban electric railway" in its report in the case of *Proposed Control of Sacramento Northern Railway by W. P. R. Co.*, 71 I. C. C. 653, where it said:

> "We are by no means convinced, however, that the Northern is an interurban electric railway as that term is used in the statute. Much of the transportation service rendered by it, no doubt, is similar to that rendered by electric interurban railways. The service of such railways, however, *is distinguished by its local and limited character and the fact that the bulk of their revenues are derived from the transportation of passengers.* Their

facilities for handling freight are usually inadequate or lacking so as to disable them from engaging in its general transportation. The amount of business interchanged by them with connecting carriers is ordinarily very small.

"Congress obviously did not intend to exclude all electric railways from the operation of section 20a. If the Western Pacific were to completely electrify its system it would not thereby become a 'street, suburban, or interurban electric railway.' Some of its operations might partake of the nature of street, suburban, or interurban railway service, but its business as a whole would be of a far broader character. Similarly, it appears from the facts of record that the Sacramento Northern is more than an interurban carrier as that term is generally understood.

"Since the time of its organization its revenues from freight, mail, and express have exceeded those received from the transportation of passengers. *Indeed, its revenue from freight alone has been practically equal to its passenger revenue.* Its total first-track main-line mileage is 165.03 as compared with which its mileage of yard track and sidings is 41.49. The relatively large total of yard and sidings is not explained, but it is a fair presumption that most of it is required in connection with freight service. In the language of the application, 'the more important part of its business consists of through passenger and freight business' interchanged with various trunk lines. It is engaged in the general transportation of passengers and freight and conducts its business substantially in the same manner as any steam railroad engaged in such transportation. The fact that it is operated electrically does not, therefore, in our opinion, remove it from our jurisdiction under section 20a." (Italics ours.)

It is to be noted that the language used in Section 20a in excepting from the requirements of said section interurban electric railways is exactly the same as that used in Paragraph (22) of Section 1, and the *Sacramento Northern Case* is, therefore, directly in point.

Point Eleven.

The Case of United States v. Village of Hubbard, 266 U. S. 474, Relied on by the Appellant, is not Authority for the Interpretation Contended for.

The holding in the case of *United States v. Village of Hubbard, supra,* was to include interurbans within, rather than to exclude them from, the regulatory jurisdiction of the Commission.

Nowhere in the opinion in that case is there an intimation that an electrically operated freight carrier of the national importance of the Piedmont & Northern is to be deemed an "interurban" within the meaning of Paragraph (22) or of any other of the statutory provisions referred to. Nowhere in the opinion is there any intimation that the court considered that, under the guise of extensions of an "interurban electric railway", it is open to an independently operated freight carrier of the character of the Piedmont & Northern without federal supervision to connect up with two steam roads and form a new paralleling and competing trunk line of carriers of the scope and national importance shown to be proposed on this record.

The only significance of that case here from the standpoint of the appellant seems to be that the court said (pp. 479-480): "Transportation Act, 1920, c. 91, 41 Stat. 456, enlarged in several respects, the powers of the Commission, and dealt also in other ways with

carriers engaged in interstate commerce. In doing so, it provided expressly in five sections for the exclusion of certain electric railways from the operation of the powers conferred; and it also differentiated interurban electric railways from street and suburban railways by specific reference to each, although a distinction in treatment was made in only one case"; and that the court appended to this passage of the opinion foot-note 7 in which it matched up the varying provisions of Section 422 (15a); Section 402; Section 439 (20a); Section 209; and Section 300.

In doing this the court merely placed the sections side by side and adverted to internal distinctions between urban, suburban and interurbans, and between various kinds of interurbans, *all of them within the language of the various sections.*

The court did not have its attention upon and was not considering the outside dividing line between "interurbans," variously excepted or not excepted by the varying qualifying language of the five sections of the Act, and those electric railways which are outside any reasonable classification as "interurbans" and hence excluded from federal regulation by none of the sections referred to. It is that outside dividing line which is to be surveyed here.

There was in that case no intimation that the court considered that all electric railways are within the term "interurban" as used with divers qualifications in all five sections.

Foot-note 4 to the opinion is far more significant of what the court understood to be included within the general term "interurban," since it points out that of 267 operating "interurbans" which filed reports for 1917, 40 did not report any freight revenue, and that of

the total revenue of the 267, only 9.4 per cent was freight revenue.

Manifestly the court in referring to "interurbans" was referring to a class of railroads vastly different in character from the Piedmont & Northern.

We submit that it is the later decision in the Santa Fe case, construing this very exclusion clause of Paragraph (22), and not the decision in the Hubbard case passing upon a wholly different question, which is in point and controlling here.

Point Twelve.

The Appellant's Assumption—"Once an Interurban, Always an Interurban"—is Wrong. The Court Below Correctly Held That Whatever may Have Been its Character Originally, the Piedmont & Northern has Long Since Invaded the National Field of Transportation to the Extent That it has Clearly Stepped out of the "Interurban" Class.

Perhaps having in mind the sound of the ancient maxim "once a mortgage, always a mortgage," the appellant contends that an "interurban" has the same sort of incapacity for change.

On the facts of this record, appellant was never an interurban within the statutory meaning. It was incorporated as a general railroad, not as an interurban, with power to use any motive power it might choose, and with power to buy, lease, own and operate the franchises and properties of any steam railroad in any states. Its choice of electric motive power was of course dictated by the fact that the great Duke interests which own it also own the great hydro-electric developments of the Piedmont Carolinas. It

was launched, not as an interurban, but as the freight transportation enterprise of this great commercial and industrial combination to carry the freight of its masters and of its allied fellow servants and to carry all other outside freight of the territory upon which it could lay its hands by ordinary competition, or by the extraordinary competition furnished by its strategically chosen board of industrialist directors and by the ramifying powers of the Duke interests to influence and control freight to their railroad through stock ownership, power contracts, warehouse traffic agreements, merchandise buying power, and the wide-spreading and powerful influence of the Duke Endowment benevolence to universities, colleges, schools, hospitals, churches, and superannuated Protestant ministers of the territory.

In the outset it began as a freight carrying railroad of national importance and since then its local business has become of less and less, and its national business of more and more, importance.

But if all this were not so, there is no justification for the theory that an interurban as such cannot grow into something else and thereby step into the field of national regulation. The appellant and the intervenor on its behalf argue that if this were so an interurban might be such one day and the next day might change its character; that it would not be able without litigation to determine its own character. This is but the type of the practical trouble always inherent in drawing the line frequently surveyed with difficulty, and only by the gradual process of judicial inclusion and exclusion, between the fields of state and national power.

A logging road, lying wholly within a state and not

engaging in interstate commerce would be wholly within the power of the state. But if it should extend the scope of its operations and begin to carry interstate commerce it would change its character and come within federal power. Just so an interurban might change by changing the essential character of its business.

We submit that the District Court correctly held (R. 251):

> "It is our conclusion that the more recent rulings of the Commission conform to the purpose of the statute and point the way to the correct classification of the Piedmont and Northern. Its freight traffic dominates so completely the field of its operations, and reaches so far, through interchange with other railroads, that it is outside the class which Congress intended to exclude from the control of the Commission. Even if in the beginning it was merely an interurban railroad, its essential character has so greatly changed, and its operations and interests have become so similar to those of a general steam carrier, that it is now well able to commit the mischiefs of uncontrolled expansion, which the Act was designed to prevent."

Point Thirteen.

The Decision of the United States Labor Board Construing Section 300, and the use of Somewhat Similar Language by Congress in the Subsequent Railway Labor Act of May 20, 1926, Cannot be Construed as an Adoption by Congress of the Labor Board's Interpretation and as a Retroactive Declaration That the Language Used in the Transportation Act had the Meaning Attributed to Similar Language by the Labor Board.

The appellant places some reliance upon the decision of the former Labor Board in *Brotherhood of Locomo-*

tive Engineers, et al., v. Spokane & Eastern Railway, et al., decision No. 33 (docket 26-a, December 11, 1920) wherein that Board held that the Piedmont & Northern and certain other electric carriers were excluded from the Board's jurisdiction as being "street, interurban, and suburban electric railway (s) not operated as a part of a general railroad system of transportation."

Appellant, of course, does not rely on this decision as authority, but only treats it as having some persuasive effect. The Labor Board was passing upon another statute, dictated by other considerations. Its decision does not compare, for persuasive force, with the decision of the Interstate Commerce Commission in this very case that the Piedmont & Northern is not an "interurban electric railway" within the meaning of Paragraph (22).

The Labor Board's decision is very far from having the persuasive force of the decision of the District Court in this suit, two circuit judges and one district judge sitting.

However, the appellant argues that since the language of Section 300 construed by the Labor Board was substantially similar to the language of Paragraph (22), and since thereafter, upon the abolition of the Labor Board, and the enactment of the Railway Labor Act of May 20, 1926, the latter act used exclusion language substantially similar to that contained in Section 300 of the Transportation Act, it must be construed that Congress, being advertent to the construction placed upon Section 300 by the Labor Board, adopted that construction in incorporating substantially similar language in the Railway Labor Act of May 20, 1926, and thereby retroactively declared that meaning to have been intended in the prior use of sub-

stantially similar language in Paragraph (22) of the Transportation Act of 1920.

The Labor Board was not a court. Its decision has no significance for the application of the well-settled principle that the adoption by a legislature of a statute previously enacted by another legislature, and which previous statute has received definite judicial construction, constitutes an adoption by the second legislature of the judicial construction theretofore placed upon the act of the first legislature.

We submit that the doctrine announced in *Alexander v. The Mayor and Commonalty of Alexandria*, 5 Cranch, 1, 7, 8, cited on page 67 of appellant's brief, has no application to this situation. That doctrine is that if in a subsequent clause of the same act provisions are introduced which show the sense in which the legislature employed doubtful phrases previously used, that sense is to be adopted in construing those phrases; that consequently if a subsequent act on the same subject affords *complete demonstration* of the legislative sense of its own language, the subsequent should be incorporated into the previous act in expounding the previous act.

But the language of the Railway Labor Act of May 20, 1926, is no more explicit or definitive than the language of Paragraph (22) enacted in 1920, and offers no more of a demonstration as to the legislative meaning.

The doctrine relied upon would not justify the argument that the decision by the Labor Board construing similar language of Section 300, the decision being made after the passage of the Transportation Act of 1920, had a retroactive effect on what Congress meant in 1920 in writing Paragraph (22). Nor can it be

deemed that the use in 1926 by Congress of substantially similar language in a new railway labor act, no more definite or expository as to its meaning than was Paragraph (22), had the effect to adopt the intervening construction placed on language of a repealed statute by a no-longer existent administrative board having once had jurisdiction over a subject-matter quite different from that covered by Paragraph (22).

We submit that the decision by the Labor Board has no persuasive force.

Point Fourteen.

Regardless of the View Which This Court may Entertain as to the Construction of the Words "Interurban Electric Railway", the Decree below Should be Affirmed as Ultimateley Correct, for That, in any Event, the Suit Should Have Been Dismissed on Either or Both of the Following Grounds: 1. That the Piedmont & Northern, Even if an Interurban, is and Would be "Operated as a Part or Parts of a General Steam Railroad System of Transportation"; and 2. The Commission's Order is a Negative Order, Not Subject to Injunction by the Courts Under the Urgent Deficiencies Act.

(1.) EVEN IF DEEMED AN "INTERURBAN", THE PIEDMONT & NORTHERN IS, AND IF EXTENDED, WOULD BE, "OPERATED AS A PART OR PARTS OF A GENERAL STEAM RAILROAD SYSTEM OF TRANSPORTATION" WITHIN THE MEANING OF PARAGRAPH (22) AND ON THIS GROUND THE COMMISSION HAD JURISDICTION.

The court below adopted the view of the Piedmont & Northern as to the meaning of the additional qualifying language, "not operated as a part or parts of a

general steam railroad system of transportation." The United States and the intervening defendants did not except or appeal from this holding. However, our view has always been that this language does not have the meaning in the statute, attributed to it by the appellant and by the District Court, and that its decree dismissing the bill on the ground that the Commission had jurisdiction of the application for a certificate, might equally well have been predicated on the ground that the Piedmont & Northern, even if held to be an interurban, is and would be "operated as a part or parts of a general steam railroad system of transportation", within the legislative meaning as to that language.

The record shows, beyond peradventure, that the Piedmont & Northern is now operated, and if extended as proposed, would be operated, distinctly as an important part of the general steam railroad system of transportation of the United States.

We do not think that by the use of the word "system", Congress intended to refer to corporate ownership and operation. We think it was outlining the same line of distinction for which we have argued on the question of the construction of the word "interurban," to wit: the distinction between that which is of local significance and that which is of national importance. We think that Congress intended that even in the case of a railroad within the class of "interurbans", if it be operated as a freight carrier, and as a part of the general steam railroad system of transportation of the country, its proposed extension should be within the jurisdiction of the Commission. The other construction, we think, gives entirely too much force to the use of the indefinite article "a", rather than the definite article, "the".

The railroad system of the United States is a general steam railroad system of transportation, and it was that system which Congress was undertaking to foster and preserve by enacting the Transportation Act.

The language is *not* "not operated as a part of a *steam railroad*" but *is* "not operated as a part or parts of a *general* steam railroad *system* of transportation". We do not think Congress would have used the word "general" if it had intended by "system" to imply merely a particular system operated under one corporate control.

In *Railroad Commission of Wisconsin v. Chicago, Burlington and Quincy,* 257 U. S. 563, this court, in expounding the purposes of the Transportation Act, said (589):

> "Congress, in its control of its interstate commerce *system,* is seeking, in the Transportation Act, to make the *system* adequate to the needs of the country by securing for it a reasonable compensatory return for all the work it does." (Italics ours.)

The use by the court in that case of the word "system" did not imply lines of railroad owned by one corporate entity, but implied the "general steam railroad system of transportation" of the United States. We think the words in Paragraph (22) have the same meaning. This court used the word "system" as referring to the railroad system of the United States in its opinions in *New England Divisions Case,* 261 U. S. 184, 190; and in *Dayton-Goose Creek Railway v. United States,* 263 U. S. 456, 477, 478, 480 and 485.

(2) In any Event, the Decree Should be Affirmed and the Appeal Dismissed on the Ground that the Commission's Order is a Negative Order, Not the Subject of Injunction of the Courts under the Urgent Deficiencies Act.

The defendants have not excepted and appealed from the refusal of the District Court to grant the motion to dismiss (R. 97-98) on the ground that the order of the Commission sought to be enjoined, annulled and set aside is a negative order, not the subject of injunction as decided in *Procter and Gamble v. United States,* 225 U. S. 282.

This point will be fully argued in the briefs of the United States and of the Interstate Commerce Commission. Without elaboration, we state our views briefly and adopt the arguments made on this point by the United States and the Commission.

This motion goes, not to the merits as to the jurisdiction of the Commission, but to the jurisdiction of the court, and could be raised here without exception.

The court below disposed of the case on its merits and we hope this court will.

However, in any event there was no reversible error in the decree below, whatever this court may decide on the merits, since if not dismissed on the merits the bill should have been dismissed on the motion.

The Commission has already refused certificate of public convenience and necessity. There is no threat to repeat the refusal. The courts cannot enjoin this past act.

The Commission has already held that it had jurisdiction of the application for certificate. There is no threat of a future such holding. Again the courts can-

not enjoin a past holding by the Commission that it has jurisdiction.

The holding by the Commission that the Piedmont & Northern is not an interurban excepted by Paragraph (22) has not changed its status. If this holding was erroneous, the status of the Piedmont & Northern as such interurban would remain unchanged.

If it is not an interurban, the penalties under which it would come for extending without a certificate are penalties which flow, not from the order of the Commission, but from the statute.

The Commission's order does not enjoin the Piedmont & Northern to do or not to do any act. It simply refuses a certificate. What the appellant refers to as "the affirmative part of the order," the holding that the Commission has jurisdiction, is no more than what would have been implied in the order had the Commission said nothing about its jurisdiction but merely made a finding on public convenience and necessity and denied the certificate. Any exercise of jurisdiction by a tribunal is tantamount to an express assertion of its jurisdiction in the premises, and the express assertion adds nothing. The order here involved is a negative order.

CONCLUSION.

In conclusion, we submit that the question of construction involved on this appeal is not a problem of strained, critical subtlety, or of lexicographical or etymological definition. It is a practical problem, like all problems of power. Looking at the language in a practical view, in the light of ordinary meaning, and at the same time considering the purposes of the Transportation Act, the mind instantly rejects the theory

that such an extension as here proposed, of such a railroad as the Piedmont & Northern, is the extension of an "interurban electric railway" exempted from Federal regulation by Paragraph (22). We submit that the decree below should be affirmed.

Respectfully submitted,

L. E. JEFFRIES,
S. R. PRINCE,
S. S. ALDERMAN,
Solicitors for Southern Railway Company.

JAS. F. WRIGHT,
Solicitor for Seaboard Air Line Railway Company.

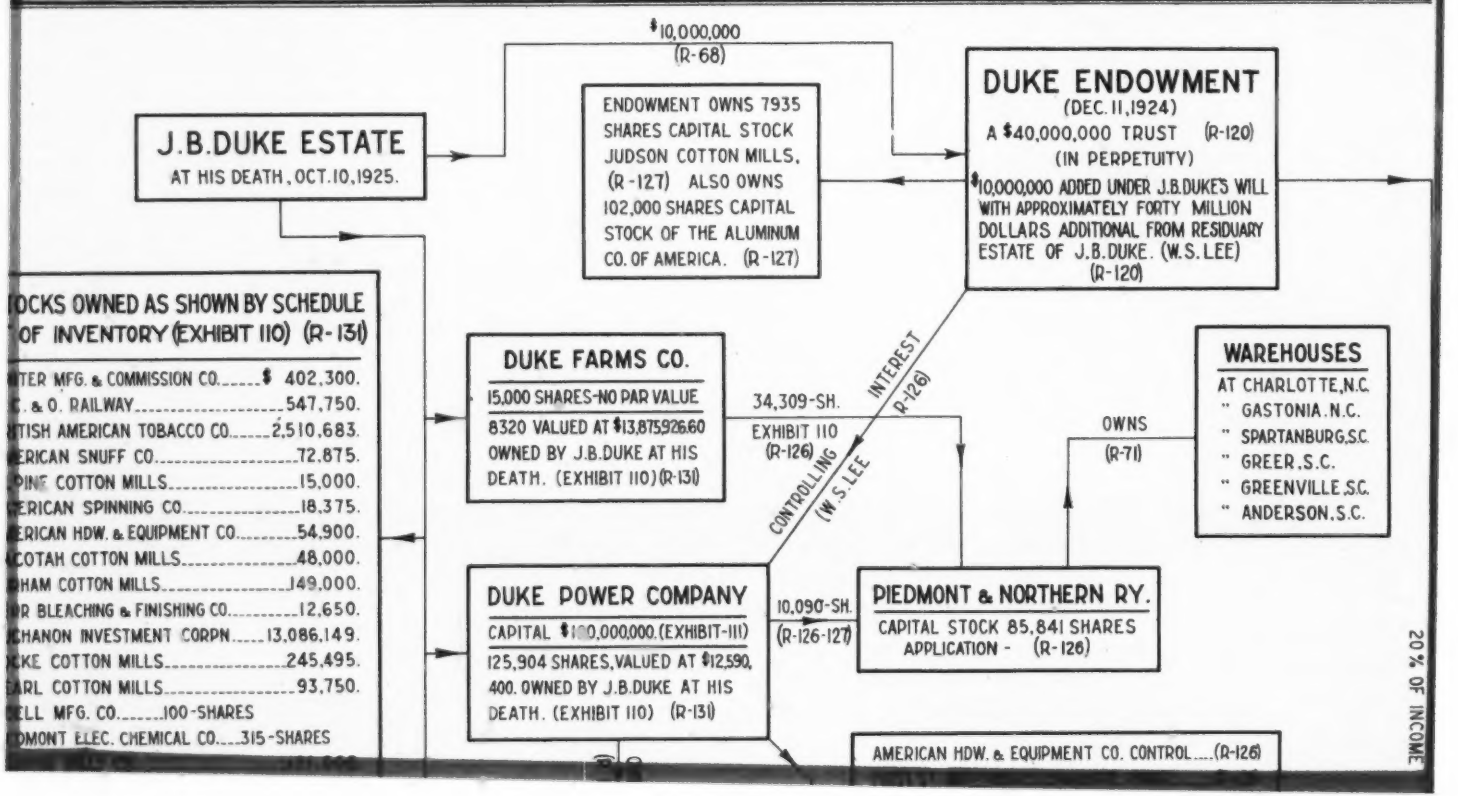
CARL H. DAVIS,
F. B. GRIER,
Solicitors for Charleston & Western Carolina Railway Company.

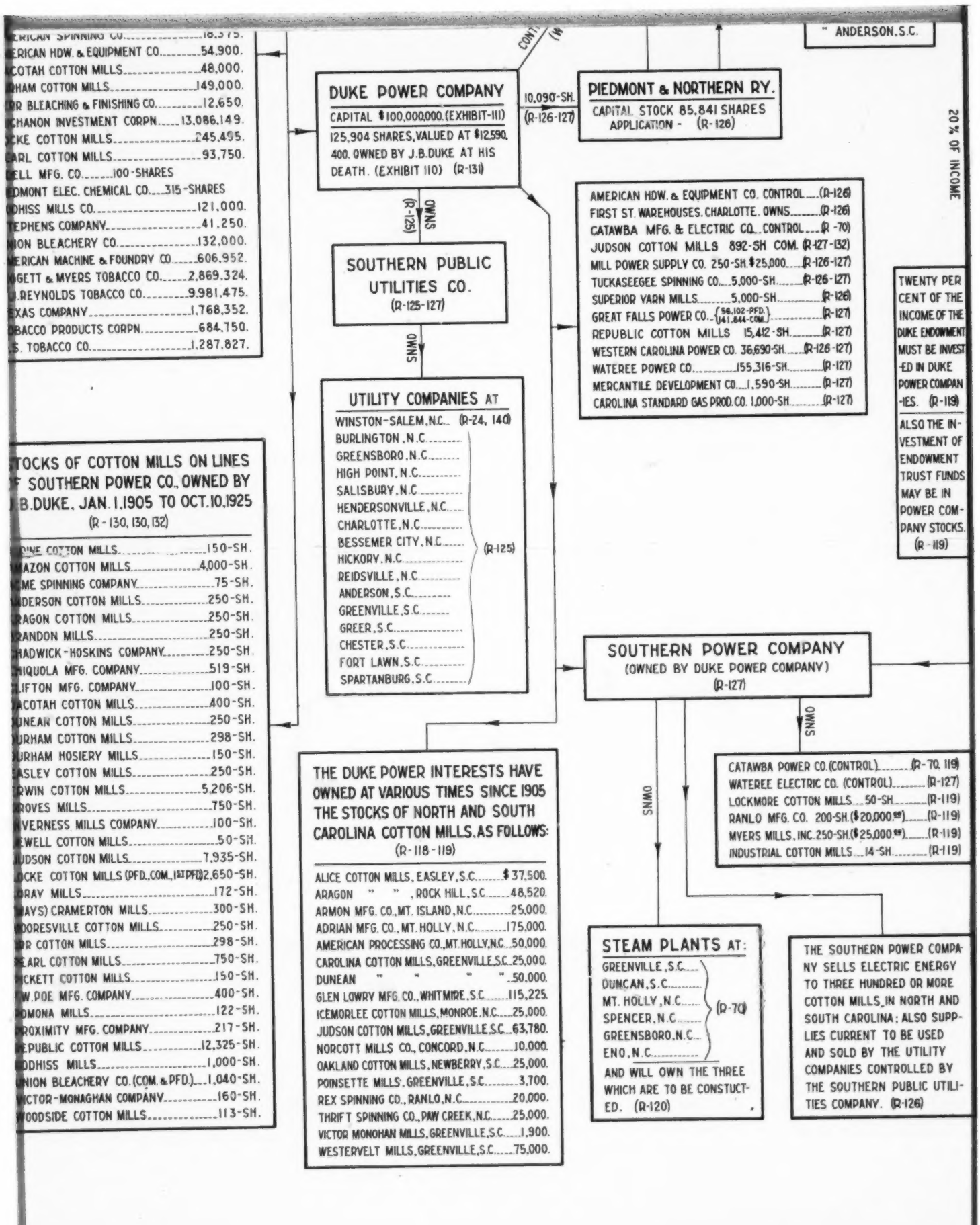
CARL H. DAVIS,
Solicitor for Atlantic Coast Line Railroad Company.

EDWARD S. JOUETT,
WM. C. BURGER,
Solicitors for Louisville & Nashville Railroad Company.

JAMES J. MCLAUGHLIN,
Solicitor for Carolina, Clinchfield & Ohio Railway, Carolina, Clinchfield & Ohio Railway of South Carolina, and Clinchfield Northern Railway of Kentucky.

INTER RELATIONSHIPS OF
DUKE ENDOWMENT, J.B.DUKE ESTATE, DUKE POWER COMPANY,
PIEDMONT AND NORTHERN RAILWAY AND OTHER CONTROLLED OR AFFILIATED INTEREST.


$10,000,000
(R-68)
J.B.DUKE ESTATE
AT HIS DEATH, OCT.10,1925.
ENDOWMENT OWNS 7935 SHARES CAPITAL STOCK JUDSON COTTON MILLS, (R-127) ALSO OWNS 102,000 SHARES CAPITAL STOCK OF THE ALUMINUM CO. OF AMERICA. (R-127)
DUKE ENDOWMENT
(DEC. 11,1924)
A $40,000,000 TRUST (R-120)
(IN PERPETUITY)
$10,000,000 ADDED UNDER J.B.DUKE'S WILL WITH APPROXIMATELY FORTY MILLION DOLLARS ADDITIONAL FROM RESIDUARY ESTATE OF J.B.DUKE. (W.S.LEE) (R-120)
OCKS OWNED AS SHOWN BY SCHEDULE OF INVENTORY (EXHIBIT 110) (R-131)
TER MFG. & COMMISSION CO. $ 402,300.
C. & O. RAILWAY 547,750.
ITISH AMERICAN TOBACCO CO. 2,510,683.
ERICAN SNUFF CO. 72,875.
PINE COTTON MILLS 15,000.
ERICAN SPINNING CO. 18,375.
ERICAN HDW. & EQUIPMENT CO. 54,900.
COTAH COTTON MILLS 48,000.
HAM COTTON MILLS 149,000.
R BLEACHING & FINISHING CO. 12,650.
CHANON INVESTMENT CORPN. 13,086,149.
CKE COTTON MILLS 245,495.
ARL COTTON MILLS 93,750.
ELL MFG. CO. 100-SHARES
DMONT ELEC. CHEMICAL CO. 315-SHARES
DUKE FARMS CO.
15,000 SHARES-NO PAR VALUE
8320 VALUED AT $13,875,926.60 OWNED BY J.B.DUKE AT HIS DEATH. (EXHIBIT 110) (R-131)
34,309-SH.
EXHIBIT 110
(R-126)
INTEREST
R-126)
CONTROLLING
(W.S.LEE
WAREHOUSES
AT CHARLOTTE, N.C.
" GASTONIA, N.C.
" SPARTANBURG, S.C.
" GREER, S.C.
" GREENVILLE, S.C.
" ANDERSON, S.C.
OWNS
(R-71)
DUKE POWER COMPANY
CAPITAL $100,000,000. (EXHIBIT-111)
125,904 SHARES, VALUED AT $12,590,400. OWNED BY J.B.DUKE AT HIS DEATH. (EXHIBIT 110) (R-131)
10,090-SH.
(R-126-127)
PIEDMONT & NORTHERN RY.
CAPITAL STOCK 85,841 SHARES
APPLICATION - (R-126)
AMERICAN HDW. & EQUIPMENT CO. CONTROL....(R-126)
20% OF INCOME


ERICAN SPINNING CO. 16,375.
ERICAN HDW. & EQUIPMENT CO. 54,900.
ACOTAH COTTON MILLS 48,000.
DHAM COTTON MILLS 149,000.
DR BLEACHING & FINISHING CO. 12,650.
CHANON INVESTMENT CORPN. 13,086,149.
CKE COTTON MILLS 245,495.
EARL COTTON MILLS 93,750.
ELL MFG. CO. 100-SHARES
EDMONT ELEC. CHEMICAL CO. 315-SHARES
DDISS MILLS CO. 121,000.
TEPHENS COMPANY 41,250.
NION BLEACHERY CO. 132,000.
MERICAN MACHINE & FOUNDRY CO 606,952.
GETT & MYERS TOBACCO CO. 2,869,324.
J. REYNOLDS TOBACCO CO. 9,981,475.
EXAS COMPANY 1,768,352.
OBACCO PRODUCTS CORPN. 684,750.
S. TOBACCO CO. 1,287,827.
" ANDERSON, S.C.
CONT. (W
DUKE POWER COMPANY
CAPITAL $100,000,000. (EXHIBIT-111)
125,904 SHARES, VALUED AT $12,590,400. OWNED BY J.B. DUKE AT HIS DEATH. (EXHIBIT 110) (R-131)
10,090-SH. (R-126-127)
PIEDMONT & NORTHERN RY.
CAPITAL STOCK 85,841 SHARES
APPLICATION - (R-126)
20% OF INCOME
(R-125) OWNS
SOUTHERN PUBLIC UTILITIES CO.
(R-125-127)
SNMO
AMERICAN HDW. & EQUIPMENT CO. CONTROL (R-126)
FIRST ST. WAREHOUSES, CHARLOTTE. OWNS (R-126)
CATAWBA MFG. & ELECTRIC CO. CONTROL (R-70)
JUDSON COTTON MILLS 892-SH COM. (R-127-132)
MILL POWER SUPPLY CO. 250-SH. $25,000 (R-126-127)
TUCKASEEGEE SPINNING CO. 5,000-SH (R-126-127)
SUPERIOR YARN MILLS 5,000-SH (R-126)
GREAT FALLS POWER CO. {56,102-PFD. / 41,844-COM.} (R-127)
REPUBLIC COTTON MILLS 15,412-SH. (R-127)
WESTERN CAROLINA POWER CO. 36,690-SH. (R-126-127)
WATEREE POWER CO. 155,316-SH. (R-127)
MERCANTILE DEVELOPMENT CO. 1,590-SH. (R-127)
CAROLINA STANDARD GAS PROD. CO. 1,000-SH. (R-127)
TWENTY PER CENT OF THE INCOME OF THE DUKE ENDOWMENT MUST BE INVESTED IN DUKE POWER COMPANIES. (R-119)
ALSO THE INVESTMENT OF ENDOWMENT TRUST FUNDS MAY BE IN POWER COMPANY STOCKS. (R-119)
UTILITY COMPANIES AT
WINSTON-SALEM, N.C. (R-24, 140)
BURLINGTON, N.C.
GREENSBORO, N.C.
HIGH POINT, N.C.
SALISBURY, N.C.
HENDERSONVILLE, N.C.
CHARLOTTE, N.C.
BESSEMER CITY, N.C.
HICKORY, N.C.
REIDSVILLE, N.C.
ANDERSON, S.C.
GREENVILLE, S.C.
GREER, S.C.
CHESTER, S.C.
FORT LAWN, S.C.
SPARTANBURG, S.C.
(R-125)
STOCKS OF COTTON MILLS ON LINES OF SOUTHERN POWER CO., OWNED BY J.B. DUKE, JAN. 1, 1905 TO OCT. 10, 1925
(R-130, 130, 132)
DINE COTTON MILLS 150-SH.
MAZON COTTON MILLS 4,000-SH.
ME SPINNING COMPANY 75-SH.
NDERSON COTTON MILLS 250-SH.
RAGON COTTON MILLS 250-SH.
RANDON MILLS 250-SH.
RADWICK-HOSKINS COMPANY 250-SH.
CHIQUOLA MFG. COMPANY 519-SH.
CLIFTON MFG. COMPANY 100-SH.
CACOTAH COTTON MILLS 400-SH.
DUNEAN COTTON MILLS 250-SH.
URHAM COTTON MILLS 298-SH.
URHAM HOSIERY MILLS 150-SH.
EASLEY COTTON MILLS 250-SH.
ERWIN COTTON MILLS 5,206-SH.
GROVES MILLS 750-SH.
INVERNESS MILLS COMPANY 100-SH.
EWELL COTTON MILLS 50-SH.
JUDSON COTTON MILLS 7,935-SH.
LOCKE COTTON MILLS (PFD., COM., 1ST PFD.) 2,650-SH.
LORAY MILLS 172-SH.
(MAYS) CRAMERTON MILLS 300-SH.
OORESVILLE COTTON MILLS 250-SH.
OR COTTON MILLS 298-SH.
PEARL COTTON MILLS 750-SH.
PICKETT COTTON MILLS 150-SH.
R.W. POE MFG. COMPANY 400-SH.
POMONA MILLS 122-SH.
PROXIMITY MFG. COMPANY 217-SH.
REPUBLIC COTTON MILLS 12,325-SH.
RIDDISS MILLS 1,000-SH.
UNION BLEACHERY CO. (COM. & PFD.) 1,040-SH.
VICTOR-MONAGHAN COMPANY 160-SH.
WOODSIDE COTTON MILLS 113-SH.
THE DUKE POWER INTERESTS HAVE OWNED AT VARIOUS TIMES SINCE 1905 THE STOCKS OF NORTH AND SOUTH CAROLINA COTTON MILLS. AS FOLLOWS:
(R-118-119)
ALICE COTTON MILLS, EASLEY, S.C. $37,500.
ARAGON " " , ROCK HILL, S.C. 48,520.
ARMON MFG. CO., MT. ISLAND, N.C. 25,000.
ADRIAN MFG. CO., MT. HOLLY, N.C. 175,000.
AMERICAN PROCESSING CO., MT. HOLLY, N.C. 50,000.
CAROLINA COTTON MILLS, GREENVILLE, S.C. 25,000.
DUNEAN " " " " 50,000.
GLEN LOWRY MFG. CO., WHITMIRE, S.C. 115,225.
ICEMORLEE COTTON MILLS, MONROE, N.C. 25,000.
JUDSON COTTON MILLS, GREENVILLE, S.C. 63,780.
NORCOTT MILLS CO., CONCORD, N.C. 10,000.
OAKLAND COTTON MILLS, NEWBERRY, S.C. 25,000.
POINSETTE MILLS, GREENVILLE, S.C. 3,700.
REX SPINNING CO., RANLO, N.C. 20,000.
THRIFT SPINNING CO., PAW CREEK, N.C. 25,000.
VICTOR MONOHAN MILLS, GREENVILLE, S.C. 1,900.
WESTERVELT MILLS, GREENVILLE, S.C. 75,000.
SOUTHERN POWER COMPANY
(OWNED BY DUKE POWER COMPANY)
(R-127)
SNMO
SNMO
CATAWBA POWER CO. (CONTROL) (R-70, 119)
WATEREE ELECTRIC CO. (CONTROL) (R-127)
LOCKMORE COTTON MILLS 50-SH. (R-119)
RANLO MFG. CO. 200-SH. ($20,000.00) (R-119)
MYERS MILLS, INC. 250-SH. ($25,000.00) (R-119)
INDUSTRIAL COTTON MILLS 14-SH. (R-119)
STEAM PLANTS AT:
GREENVILLE, S.C.
DUNCAN, S.C.
MT. HOLLY, N.C.
SPENCER, N.C.
GREENSBORO, N.C.
ENO, N.C.
(R-70)
AND WILL OWN THE THREE WHICH ARE TO BE CONSTUCTED. (R-120)
THE SOUTHERN POWER COMPANY SELLS ELECTRIC ENERGY TO THREE HUNDRED OR MORE COTTON MILLS, IN NORTH AND SOUTH CAROLINA; ALSO SUPPLIES CURRENT TO BE USED AND SOLD BY THE UTILITY COMPANIES CONTROLLED BY THE SOUTHERN PUBLIC UTILITIES COMPANY. (R-126)

Appendix B.

OFFICIAL RELATIONSHIP AND AFFILIATIONS OF PIEDMONT AND NORTHERN DIRECTORS WITH SHIPPING AND OTHER INTERESTS

PIEDMONT AND NORTHERN RAILWAY DIRECTORS

G. G. Allen, New York, N. Y.	*Chairman Duke Endowment, which controls Duke Power Co.* (26, 126-127) *President Southern Power Co., which controls other Duke interests.* (26, 125-127)
C. C. Armstrong, Gastonia, N. C.	*President Armstrong Chain of Mills.* (26) *President several mills in Gastonia (N. C.), Rock Hill (S. C.) and various points.* (127)
J. W. Arrington, Greenville, S. C.	*President Union Bleachery, Greenville, S. C.* (26, 128, 150)
W. E. Beattie, Greenville, S. C.	*Formerly President Parker Chain of Mills in South Carolina.* (26, 128)
L. D. Blake, Belton, S. C.	*Head of Belton Cotton Mills, Belton, S. C.* (26, 128)
C. A. Cannon, Concord, N. C.	*President Cannon Chain of Mills.* (26, 128)
Stuart W. Cramer, Gastonia, N. C.	*Large mill owner.* (129)
J. T. Collins, Philadelphia, Pa.	
B. E. Geer, Greenville, S. C.	*President Chain of Mills in N. C. and S. C.* *Banker of Greenville, S. C.* *Trustee Duke Endowment.* (26, 128)
B. B. Gossett, Charlotte, N. C.	*Head of Mills at Charlotte, N. C., and Anderson, S. C.* (26, 128)
J. P. Gossett, Williamston, S. C.	*President Williamston Cotton Mills, Williamston, S. C.* (26) *President Mills at Anderson, S. C.* (128)
E. F. Greene, Boston, Mass.	*President Lockwood-Greene & Co., Boston, Mass.; Head of Large Mill Interests in South Carolina.* (27, 128)
C. E. Hutchison, Mt. Holly, N. C.	*Head of Mills at Mt. Holly, N. C.* (26, 128)
J. A. Law, Spartanburg, S. C.	*Mill Owner and Banker of Spartanburg, S. C.* (27, 128)
W. S. Lee, Charlotte, N. C.	*President Piedmont & Northern Ry., Vice-President and Chief Engineer Southern Power Co., Vice-President-Trustee Duke Endowment.* (128)
R. E. Ligon, Anderson, S. C.	*Head of Large Mill Interests at Anderson, S. C.* (27, 128)

PIEDMON

R. E. Ligon, Anderson, S. C.	*Head of Large Mill Interests at Anderson, S. C.* (27, 128)
A. F. McKissick, Greenville, S. C.	*Mill Owner and President Chamber of Commerce, Greenville, S. C.* (27, 128)
W. S. Montgomery, Spartanburg, S. C.	*President of Mills at Spartanburg and vicinity.* (27, 128)
V. M. Montgomery, Spartanburg, S. C.	*President of Mills in South Carolina and Georgia.* (27, 128)
J. C. Self, Greenwood, S. C.	*President Large Mill Interests at Greenwood, S. C., and adjacent towns.* (27, 129)
J. H. Separk, Gastonia, N. C.	*Treasurer Seven Cotton Mills.* (27, 129, 158)
A. W. Smith, Greenville, S. C.	*President Large Mill Interests at Greenville, S. C.* (27, 129)
E. A. Smythe, Flat Rock, N. C.	*President Cotton Mill Balfour, N. C., and identified with many important interests.* (27, 129)
E. Thomason, Charlotte, N. C.	*Vice-President and General Manager, Piedmont & Northern Railway.* (27, 132)
J. T. Woodside, Greenville, S. C.	*Large Mill Owner at Greenville, S. C., and other points in South Carolina.* (27, 129)